

**2013-2014**  
**SESSION LAWS**  
OF THE  
**STATE OF WASHINGTON**

2013 THIRD SPECIAL SESSION  
SIXTY-THIRD LEGISLATURE  
Convened November 7, 2013. Adjourned November 9, 2013.

2014 REGULAR SESSION  
SIXTY-THIRD LEGISLATURE  
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## WASHINGTON SESSION LAWS GENERAL INFORMATION

### 1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed in a permanent softbound edition containing the accumulation of all laws adopted in the legislative session. The edition contains a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained - price.* The permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The edition costs \$25.00 per set plus applicable state and local sales taxes and \$7.00 shipping and handling. All orders must be accompanied by payment.

### 2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER.

The session laws are presented 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 effective date for the Laws of the 2014 regular session to be the first moment of June 12, 2014.
- (b) Laws that carry an emergency clause take effect immediately, or as otherwise specified, 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 2014 laws may be found at the back of the final volume.

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# **WASHINGTON LAWS**

**2013 THIRD SPECIAL SESSION**





CHAPTER 1

[Engrossed House Bill 2088]

AEROSPACE INDUSTRY APPROPRIATIONS

AN ACT Relating to appropriations specifically for activities related to the aerospace industry for permitting and training, including program development, staff, facilities, and equipment; adding new sections to 2013 2nd sp.s. c 4 (uncodified); adding new sections to 2013 2nd sp.s. c 19 (uncodified); and making appropriations.

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

**NEW SECTION. Sec. 1.** A new section is added to 2013 2nd sp.s. c 4 (uncodified) to read as follows:

**FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES**

General Fund—State Appropriation (FY 2015) . . . . . \$8,500,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$8,000,000 of the general fund—state appropriation for fiscal year 2015 is provided solely for increasing high demand aerospace enrollments by an additional one thousand full-time equivalent students for the 2014-15 academic year in programs and at sites recommended by the Washington aerospace and advanced manufacturing pipeline advisory committee or its successor committee. It is the intent of the legislature for funding to be ongoing or until there is no longer a demonstrated need.

(2) \$500,000 of the general fund—state appropriation for fiscal year 2015 is provided solely for developing a fabrication composite wing incumbent worker training program to be housed at the Washington aerospace training and research center. It is the intent of the legislature for development and planning funds to continue in fiscal year 2016 and for the training program to serve incumbent workers starting with the 2015-16 academic year.

**NEW SECTION. Sec. 2.** A new section is added to 2013 2nd sp.s. c 4 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF COMMERCE**

General Fund—State Appropriation (FY 2014) . . . . . \$750,000  
General Fund—State Appropriation (FY 2015) . . . . . \$1,250,000  
TOTAL APPROPRIATION . . . . . \$2,000,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely for the department of commerce local government and infrastructure division to provide grants to local governments to assist a county or city in paying for the cost of preparing an environmental analysis that advances environmental permitting activities in and around current and future large manufacturing sites for aerospace and other key economic growth centers.

**NEW SECTION. Sec. 3.** A new section is added to 2013 2nd sp.s. c 19 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF COMMERCE**

Renton Aerospace Training Center Construction (92000151)

The appropriation in this section is subject to the following conditions and limitations: The appropriation in this section is provided solely for construction of the Renton aerospace training center. This funding is in addition to funding provided in section 1077, chapter 19, Laws of 2013 2nd sp. sess. (uncodified).

Appropriation:

|   |                    |
|---|--------------------|
| State Building Construction Account—State . . . . . | \$5,000,000        |
| Prior Biennia (Expenditures) . . . . .              | \$0                |
| Future Biennia (Projected Costs) . . . . .          | \$0                |
| <b>TOTAL . . . . .</b>                              | <b>\$5,000,000</b> |

NEW SECTION, Sec. 4. A new section is added to 2013 2nd sp.s. c 19 (uncodified) to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Edmonds Community College: Washington Aerospace Training and Research Center (30000979)

The appropriation in this section is subject to the following conditions and limitations: The appropriation in this section is provided solely for building modifications and acquisition of specialized equipment for the purpose of developing a fabrication composite wing incumbent worker training program at the Washington aerospace training and research center located at Paine Field.

Appropriation:

|   |                    |
|---|--------------------|
| State Building Construction Account—State . . . . . | \$1,500,000        |
| Prior Biennia (Expenditures) . . . . .              | \$0                |
| Future Biennia (Projected Costs) . . . . .          | \$1,500,000        |
| <b>TOTAL . . . . .</b>                              | <b>\$3,000,000</b> |

Passed by the House November 9, 2013.

Passed by the Senate November 9, 2013.

Approved by the Governor November 11, 2013.

Filed in Office of Secretary of State November 11, 2013.

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**CHAPTER 2**

[Engrossed Substitute Senate Bill 5952]

**AEROSPACE INDUSTRY—TAX PREFERENCES—TAX EXEMPTION**

AN ACT Relating to incentivizing a long-term commitment to maintain and grow jobs in the aerospace industry in Washington state by extending the expiration date of aerospace tax preferences and expanding the sales and use tax exemption for the construction of new facilities used to manufacture superefficient airplanes to include the construction of new facilities used to manufacture commercial airplanes or the wings or fuselage of commercial airplanes; amending RCW 82.08.980, 82.12.980, 82.04.260, 82.04.260, 82.04.250, 82.04.290, 82.04.4461, 82.04.4463, 82.08.975, 82.12.975, 82.29A.137, and 84.36.655; adding a new section to chapter 82.32 RCW; creating a new section; providing a contingent effective date; providing an effective date; and providing expiration dates.

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

NEW SECTION, Sec. 1. (1) The legislature finds that the people of Washington have benefited enormously from the presence of the aerospace industry in Washington state. The legislature further finds that the industry

continues to provide good wages and benefits for the thousands of engineers, mechanics, and support staff working directly in the industry throughout the state. The legislature further finds that suppliers and vendors that support the aerospace industry in turn provide a range of well-paying jobs. In 2003, and again in 2006, and 2007, the legislature determined it was in the public interest to encourage the continued presence of the aerospace industry through the provision of tax incentives. To this end, and in recognition of the continuing extreme importance of the aerospace industry in Washington, it is the legislature's intent to reaffirm and build upon prior aerospace tax incentive legislation in a fiscally prudent manner.

(2) The legislature categorizes the tax preferences extended in this act as intended to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

(3) It is the legislature's specific public policy objective to maintain and grow Washington's aerospace industry workforce. To help achieve this public policy objective, it is the legislature's intent to conditionally extend aerospace industry tax preferences until July 1, 2040, in recognition of intent by the state's aerospace industry sector to maintain and grow its workforce within the state.

(4) The joint legislative audit and review committee must review the tax preferences provided in this act and report to the legislature by December 1, 2019, and every five years thereafter. As part of its tax preference reviews, the committee must specifically assess changes in aerospace industry employment in Washington in comparison with other states and internationally. To the extent practicable, the committee must use occupational data statistics provided by the bureau of labor statistics and state agencies responsible for administering unemployment insurance to perform this assessment.

**NEW SECTION, Sec. 2.** A new section is added to chapter 82.32 RCW to read as follows:

(1) Chapter ..., Laws of 2013 3rd sp. sess. (this act) takes effect contingent upon the siting of a significant commercial airplane manufacturing program in the state of Washington. If a significant commercial airplane manufacturing program is not sited in the state of Washington by June 30, 2017, chapter ..., Laws of 2013 3rd sp. sess. (this act) does not take effect.

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

(a) "Commercial airplane" has the same meaning provided in RCW 82.32.550.

(b) "New model, or any version or variant of an existing model, of a commercial airplane" means a commercial airplane manufactured with a carbon fiber composite fuselage or carbon fiber composite wings or both.

(c) "Significant commercial airplane manufacturing program" means an airplane program in which the following products, including final assembly, will commence manufacture at a new or existing location within Washington state on or after the effective date of this section:

(i) The new model, or any version or variant of an existing model, of a commercial airplane; and

(ii) Fuselages and wings of a new model, or any version or variant of an existing model, of a commercial airplane.

(d) "Siting" means a final decision, made on or after November 1, 2013, by a manufacturer to locate a significant commercial airplane manufacturing program in Washington state.

(3) The department must make a determination regarding whether the contingency in subsection (1) of this section occurs and must provide written notice of the date on which such contingency occurs and chapter ..., Laws of 2013 3rd sp. sess. (this act) takes effect. If the department determines that the contingency in subsection (1) of this section has not occurred by June 30, 2017, the department must provide written notice stating that chapter ..., Laws of 2013 3rd sp. sess. (this act) does not take effect. Written notice under this subsection (3) must be provided to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

**Sec. 3.** RCW 82.08.980 and 2010 c 114 s 126 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to:

(a) Charges ((made)), for labor and services rendered in respect to the constructing of new buildings ((by a manufacturer engaged in the manufacturing of superefficient airplanes or by a port district, to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, to)), made to (i) a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes or (ii) a port district, political subdivision, or municipal corporation, to be leased to a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes;

(b) Sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing((, or to)); or

(c) Charges made for labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

~~((2))~~ (3) No application is necessary for the tax exemption in this section~~((,)).~~ However, in order to qualify under this section before starting construction, the port district, political subdivision, or municipal corporation must have entered into an agreement with the manufacturer to build such a facility. A person claiming the exemption under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must file a complete annual report with the department under RCW 82.32.534.

~~((3))~~ (4) The exemption in this section applies to buildings~~((,))~~ or parts of buildings, including buildings or parts of buildings used for the storage of raw materials or finished product, that are used ~~((exclusively))~~ primarily in the manufacturing of ~~((superefficient airplanes, including buildings used for the storage of raw materials and finished product))~~ any one or more of the following products:

(a) Commercial airplanes;

(b) Fuselages of commercial airplanes; or

(c) Wings of commercial airplanes.

~~((4))~~ (5) For the purposes of this section, "~~(superefficient)~~ commercial airplane" has the meaning given in RCW 82.32.550.

~~((5))~~ (6) This section expires July 1, ~~((2024))~~ 2040.

**Sec. 4.** RCW 82.12.980 and 2010 c 114 s 132 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of:

(a) Tangible personal property that will be incorporated as an ingredient or component ~~((of new buildings by a manufacturer engaged in the manufacturing of superefficient airplanes or owned by a port district and to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, during the course of constructing such buildings, or to))~~ in constructing new buildings for (i) a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes or (ii) a port district, political subdivision, or municipal corporation, to be leased to a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes; or

(b) Labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.980 apply to this section, including the filing of a complete annual report with the department under RCW 82.32.534.

(3) This section expires July 1, ~~((2024))~~ 2040.

**Sec. 5.** RCW 82.04.260 and 2013 2nd sp.s. c 13 s 202 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products

manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales 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 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection (11), this subsection (11) does not apply on and after July 1, ((2024)) 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection (11) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under section 2 of this act has been sited outside the state of Washington. This subsection (11)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under section 2 of this act.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the



rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.365 percent through June 30, 2013, and beginning July 1, 2013, multiplied by the rate of 0.35 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 6.** RCW 82.04.260 and 2013 2nd sp.s. c 13 s 203 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product;

as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is

equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the

tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales 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 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection (11), this subsection (11) does not apply on and after July 1, ((2024)) 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection (11) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under section 2 of this act has been sited outside the state of Washington. This subsection (11)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under section 2 of this act.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of

extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 7.** RCW 82.04.250 and 2010 1st sp.s. c 23 s 509 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(~~((40))~~) (11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3) Until July 1, (~~2024~~) 2040, upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

**Sec. 8.** RCW 82.04.290 and 2013 c 23 s 314 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)~~ is equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) of this section; as to such persons the amount of tax on account of such activities (~~(shall be)~~ is equal to the gross income of the business multiplied by the rate of 1.5 percent.

(b) This subsection (2) 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 or her principal or supplier to be used for informational, educational, and promotional purposes (~~(shall)~~ is not (~~(be)~~) considered a part of the agent's remuneration or commission and (~~(shall)~~ is not (~~(be)~~) subject to taxation under this section.

(3)(a) Until July 1, (~~(2024)~~ 2040), upon every person engaging within this state in the business of performing aerospace product development for others, as to such persons, the amount of tax with respect to such business (~~(shall be)~~ is equal to the gross income of the business multiplied by a rate of 0.9 percent.

(b) "Aerospace product development" has the meaning as provided in RCW 82.04.4461.

**Sec. 9.** RCW 82.04.4461 and 2010 c 114 s 115 are each amended to read as follows:

(1)(a)(i) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified aerospace product development. For a person who is a manufacturer or processor for hire of commercial airplanes or components of such airplanes, credit may be earned for expenditures occurring after December 1, 2003. For all other persons, credit may be earned only for expenditures occurring after June 30, 2008.

(ii) For purposes of this subsection, "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(b) Before July 1, 2005, any credits earned under this section must be accrued and carried forward and may not be used until July 1, 2005. These carryover credits may be used at any time thereafter, and may be carried over until used. Refunds may not be granted in the place of a credit.

(2) The credit is equal to the amount of qualified aerospace product development expenditures of a person, multiplied by the rate of 1.5 percent.

(3) Except as provided in subsection (1)(b) of this section the credit must be claimed against taxes due for the same calendar year in which the qualified aerospace product development expenditures are incurred. Credit earned on or after July 1, 2005, may not be carried over. The credit for each calendar year



may not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) Any person claiming the credit must file a form prescribed by the department that must include the amount of the credit claimed, an estimate of the anticipated aerospace product development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(5) The definitions in this subsection apply throughout this section.

(a) "Aerospace product" has the meaning given in RCW 82.08.975.

(b) "Aerospace product development" means research, design, and engineering activities performed in relation to the development of an aerospace product or of a product line, model, or model derivative of an aerospace product, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities, however the term does include tool design and engineering design for the manufacturing process. The term does not 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.

(c) "Qualified aerospace product development" means aerospace product development performed within this state.

(d) "Qualified aerospace product development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined by the department, benefits, supplies, and computer expenses, directly incurred in qualified aerospace product development by a person claiming the credit provided in this section. The term does not include amounts paid to a person or to the state and any of its departments and institutions, other than a public educational or research institution to conduct qualified aerospace product development. The term does not include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's 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.

(6) In addition to all other requirements under this title, a person claiming the credit under this section must file a complete annual report with the department under RCW 82.32.534.

(7) Credit may not be claimed for expenditures for which a credit is claimed under RCW 82.04.4452.

(8) This section expires July 1, (~~2024~~) 2040.

**Sec. 10.** RCW 82.04.4463 and 2010 1st sp.s. c 23 s 515 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(~~((40))~~) (11)(b), or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(~~((40))~~) (11)(b), or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260(~~((40))~~) (11)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260(~~((40))~~) (11)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

(A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260(~~((40))~~) (11) (a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

(B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

(C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the

credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260(~~((10))~~) (11) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

(D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

(E) As used in (b)(ii)(C) of this subsection (2), "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

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

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person claiming the credit under this section must file a complete annual report with the department under RCW 82.32.534.

(6) This section expires July 1, (~~(2024)~~) 2040.

**Sec. 11.** RCW 82.08.975 and 2008 c 81 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to sales of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.08.02565, used primarily in the development, design, and engineering of aerospace products or in providing aerospace services, or to sales of or charges made for labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller (~~(shall)~~) must retain a copy of the certificate for the seller's files.

(3) (~~(As used in this section, the following definitions apply:)~~) The definitions in this subsection apply throughout this section unless the context requires otherwise.

(a) "Aerospace products" means:

(i) Commercial airplanes and their components;

(ii) Machinery and equipment that is designed and used primarily for the maintenance, repair, overhaul, or refurbishing of commercial airplanes or their components by federal aviation regulation part 145 certificated repair stations; and

(iii) Tooling specifically designed for use in manufacturing commercial airplanes or their components.

(b) "Aerospace services" means the maintenance, repair, overhaul, or refurbishing of commercial airplanes or their components, but only when such services are performed by a FAR part 145 certificated repair station.

(c) "Commercial airplane" and "component" have the same meanings provided in RCW 82.32.550.

(d) "Peripherals" includes keyboards, monitors, mouse devices, and other accessories that operate outside of the computer, excluding cables, conduit, wiring, and other similar property.

(4) This section expires July 1, (~~2024~~) 2040.

**Sec. 12.** RCW 82.12.975 and 2008 c 81 s 3 are each amended to read as follows:

(1) The provisions of this chapter (~~shall~~) do not apply in respect to the use of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.12.02565, used primarily in the development, design, and engineering of aerospace products or in providing aerospace services, or to the use of labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2) As used in this section, "peripherals," "aerospace products," and "aerospace services" have the same meanings as provided in RCW 82.08.975.

(3) This section expires July 1, (~~2024~~) 2040.

**Sec. 13.** RCW 82.29A.137 and 2010 c 114 s 134 are each amended to read as follows:

(1) All leasehold interests in port district facilities exempt from tax under RCW 82.08.980 or 82.12.980 and used by a manufacturer engaged in the manufacturing of superefficient airplanes, as defined in RCW 82.32.550, are exempt from tax under this chapter. A person claiming the credit under RCW 82.04.4463 is not eligible for the exemption under this section.

(2) In addition to all other requirements under this title, a person claiming the exemption under this section must file a complete annual report with the department under RCW 82.32.534.

(3) This section expires July 1, (~~2024~~) 2040.

**Sec. 14.** RCW 84.36.655 and 2010 c 114 s 151 are each amended to read as follows:

(1) Effective January 1, 2005, all buildings, machinery, equipment, and other personal property of a lessee of a port district eligible under RCW 82.08.980 and 82.12.980, used exclusively in manufacturing superefficient airplanes, are exempt from property taxation. A person taking the credit under RCW 82.04.4463 is not eligible for the exemption under this section. For the purposes of this section, "superefficient airplane" and "component" have the meanings given in RCW 82.32.550.

(2) In addition to all other requirements under this title, a person claiming the exemption under this section must file a complete annual report with the department under RCW 82.32.534.

(3) Claims for exemption authorized by this section must be filed with the county assessor on forms prescribed by the department and furnished by the assessor. The assessor must verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, (~~2023~~) 2039. The department may adopt rules, under

the provisions of chapter 34.05 RCW, as necessary to properly administer this section.

(4) This section applies to taxes levied for collection in 2006 and thereafter.

(5) This section expires July 1, ((2024)) 2040.

NEW SECTION. Sec. 15. Subject to section 2 of this act, section 5 of this act expires July 1, 2015.

NEW SECTION. Sec. 16. Subject to section 2 of this act, section 6 of this act takes effect July 1, 2015.

Passed by the Senate November 9, 2013.

Passed by the House November 9, 2013.

Approved by the Governor November 11, 2013.

Filed in Office of Secretary of State November 11, 2013.

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# **WASHINGTON LAWS**

**2014 REGULAR SESSION**





**CHAPTER 1**

[Senate Bill 6523]

**HIGHER EDUCATION—REAL HOPE ACT**

AN ACT Relating to expanding higher education opportunities for certain students; amending RCW 28B.92.010; creating a new section; and making an appropriation.

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

**Sec. 1.** RCW 28B.92.010 and 2004 c 275 s 34 are each amended to read as follows:

The purposes of this chapter are to establish the principles upon which the state financial aid programs will be based and to establish the state of Washington state need grant program, thus assisting financially needy or disadvantaged students domiciled in Washington to obtain the opportunity of attending an accredited institution of higher education. State need grants under this chapter are available only to students who are resident students as defined in RCW 28B.15.012(2) (a) through ~~((d))~~ (e) or any person who has completed the full senior year of high school and obtained a high school diploma, either 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 state for at least three years immediately before 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 eligible institution of higher education and has been granted deferred action for childhood arrival status pursuant to the rules and regulations adopted by the United States citizenship and immigration services.

**NEW SECTION. Sec. 2.** This act may be known and cited as the real hope act.

**NEW SECTION. Sec. 3.** The sum of five million dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2015, from the general fund to the student achievement council solely for the purpose of student financial aid payments under the state need grant program.

Passed by the Senate January 31, 2014.

Passed by the House February 18, 2014.

Approved by the Governor February 26, 2014.

Filed in Office of Secretary of State February 26, 2014.

**CHAPTER 2**

[Engrossed Substitute House Bill 1417]

**IRRIGATION DISTRICTS—ADMINISTRATION**

AN ACT Relating to the administration of irrigation districts; and amending RCW 87.03.135, 87.03.620, 87.03.630, 87.06.030, 87.03.437, and 87.03.015.

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

**Sec. 1.** RCW 87.03.135 and 1994 c 117 s 1 are each amended to read as follows:

An irrigation district has the power to sell or lease personal property owned by the district whenever its board of directors, by resolution: Determines that

the property is not necessary or needed for the use of the district; and authorizes the sale or lease. No sale or lease of such property shall be made until notice of the sale or lease is given by publication at least twenty days before the date of the sale or lease in a newspaper of general circulation in the county where the property or part of the property is located or, if there is no such newspaper in the county, in a newspaper of general circulation published in an adjoining county. The publication shall be made at least once a week during three consecutive weeks before the day fixed for making the sale or lease. The publication shall contain notice of the intention of the board of directors to make the sale or lease and shall state the time and place at which proposals for the sale or lease will be considered and at which the sale or lease will be made. Any such property so sold or leased shall be sold or leased to the highest and best bidder.

The provisions of this section relating to publication of notice shall not apply when the value of the property to be sold or leased is less than ~~((five hundred))~~ ten thousand dollars.

**Sec. 2.** RCW 87.03.620 and 1939 c 150 s 2 are each amended to read as follows:

Upon the filing of the petition, the board shall fix a time and place for the hearing of the same which shall not be less than thirty days and not more than ~~((forty-five))~~ one hundred eighty days from the date of said filing; and the board shall cause a notice of such hearing to be published prior to said hearing in three consecutive weekly issues of the official newspaper of each county in which any of said land prayed to be included is situated.

**Sec. 3.** RCW 87.03.630 and 1939 c 150 s 4 are each amended to read as follows:

The board of directors of the district shall meet at the time and place specified in the notice and shall have full authority to determine all matters pertaining to the petition, including the denial as well as the granting of said petition or any part thereof; and if it appears at said hearing, or at any adjournment thereof which may be had not to exceed in all ~~((thirty))~~ one hundred eighty days, that the land or any portion thereof petitioned to be included within the district, is susceptible of irrigation from the water supply and system of works of the said district and will be benefited by such irrigation; and if at said hearing or at any adjournment thereof as aforesaid, not more than fifty percent of the holders of title or evidence of title to the lands described in the petition and proposed to be included file their objections in writing to the inclusion of such land within the time and as ~~((in this act))~~ provided in RCW 87.03.615 through 87.03.640, the said board shall make and enter in the records of their proceedings an order including said land, or such portion thereof as in their judgment is susceptible of irrigation and will be benefited as aforesaid, within the operation of said district.

**Sec. 4.** RCW 87.06.030 and 2004 c 215 s 4 are each amended to read as follows:

Before preparing a certificate of delinquency, the treasurer of a district that has designated its own treasurer as provided in RCW 87.03.440, shall ~~((order a title search of the property for which a certificate of delinquency has been prepared to determine or verify the legal description of the property to be sold and parties in interest. In districts with two hundred thousand acres or more, the~~

~~board of directors, upon receiving the certificates of delinquency may, after reviewing the amount of delinquent assessment compared to the costs of foreclosure, including but not limited to title search, court filing fees, costs of service, and attorneys' fees, determine that it is not in the best interest of the district to commence legal action to foreclose the delinquent assessment liens)) provide to the board of directors a list of properties that may be subject to foreclosure for delinquent assessments. The board of directors shall review the list of delinquent properties. After comparing the amount of the delinquent assessment with the costs of foreclosure, including but not limited to title search, court filing fees, costs of service, and attorneys' fees, the board of directors may determine that it is not in the best interest of the district to commence legal action to foreclose the delinquent assessment liens. Nothing in this section precludes a county treasurer from proceeding with foreclosure on parcels otherwise delinquent and, in those actions, from collecting delinquent assessments due under this title.~~

**Sec. 5.** RCW 87.03.437 and 2009 c 229 s 13 are each amended to read as follows:

(1) Purchases of any materials, supplies, or equipment by the district shall be based on competitive bids except as provided in RCW 87.03.435 and 39.04.280. A formal sealed bid procedure shall be used as standard procedure for the purchases made by irrigation districts. However, the board may by resolution adopt a policy to waive formal sealed bidding procedures for purchases of any materials, supplies, or equipment for an amount set by the board not to exceed ((~~forty~~) fifty) thousand dollars for each purchase.

(2) The directors may by resolution adopt a policy to use the process provided in RCW 39.04.190 for purchases of materials, supplies, or equipment when the estimated cost is between the amount established by the board under subsection (1) of this section and a maximum amount set by resolution adopted by the board for purchases up to fifty thousand dollars exclusive of sales tax.

**Sec. 6.** RCW 87.03.015 and 1999 c 153 s 74 are each amended to read as follows:

Any irrigation district, operating and maintaining an irrigation system, in addition to other powers conferred by law, shall have authority:

(1) To purchase and sell electric power to the inhabitants of the irrigation district for the purposes of irrigation and domestic use, to acquire, construct, and lease dams, canals, plants, transmission lines, and other power equipment and the necessary property and rights therefor and to operate, improve, repair, and maintain the same, for the generation and transmission of electrical energy for use in the operation of pumping plants and irrigation systems of the district and for sale to the inhabitants of the irrigation district for the purposes of irrigation and domestic use; and, as a further and separate grant of authority and in furtherance of a state purpose and policy of developing hydroelectric capability in connection with irrigation facilities, to construct, finance, acquire, own, operate, and maintain, alone or jointly with other irrigation districts, boards of control, other municipal or quasi-municipal corporations or cooperatives authorized to engage in the business of distributing electricity, or electrical companies subject to the jurisdiction of the utilities and transportation commission, hydroelectric facilities including but not limited to dams, canals,

plants, transmission lines, other power equipment, and the necessary property and rights therefor, located within or outside the district, for the purpose of utilizing for the generation of electricity, water power made available by and as a part of the irrigation water storage, conveyance, and distribution facilities, waste ways, and drainage water facilities which serve irrigation districts, and to sell any and all the electric energy generated at any such hydroelectric facilities or the irrigation district's share of such energy, to municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission, or to other irrigation districts, and on such terms and conditions as the board of directors shall determine, and to enter into contracts with other irrigation districts, boards of control, other municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission: PROVIDED, That no contract entered into by the board of directors of any irrigation district for the sale of electrical energy from such hydroelectric facility for a period longer than forty years from the date of commercial operation of such hydroelectric facility shall be binding on the district until ratified by a majority vote of the electors of the district at an election therein, called, held and canvassed for that purpose in the same manner as that provided by law for district bond elections.

(2) To construct, repair, purchase, maintain or lease a system for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(3) To construct, repair, purchase, lease, acquire, operate and maintain a system of drains, sanitary sewers, and sewage disposal or treatment plants as herein provided.

(4) To assume, as principal or guarantor, any indebtedness to the United States under the federal reclamation laws, on account of district lands.

(5) To maintain, repair, construct and reconstruct ditches, laterals, pipe lines and other water conduits used or to be used in carrying water for irrigation of lands located within the boundaries of a city or town or for the domestic use of the residents of a city or town where the owners of land within such city or town shall use such works to carry water to the boundaries of such city or town for irrigation, domestic or other purposes within such city or town, and to charge to such city or town the pro rata proportion of the cost of such maintenance, repair, construction and reconstruction work in proportion to the benefits received by the lands served and located within the boundaries of such city or town, and if such cost is not paid, then and in that event said irrigation district shall have the right to prevent further water deliveries through such works to the lands located within the boundaries of such city or town until such charges have been paid.

(6) To acquire, install and maintain as a part of the irrigation district's water system the necessary water mains and fire hydrants to make water available for firefighting purposes; and in addition any such irrigation district shall have the authority to repair, operate and maintain such hydrants and mains.

(7) To enter into contracts with other irrigation districts, boards of control, municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission to jointly

acquire, construct, own, operate, and maintain irrigation water, domestic water, drainage and sewerage works, and electrical power works to the same extent as authorized by subsection (1) of this section, or portions of such works.

(8) To acquire from a water-sewer district wholly within the irrigation district's boundaries, by a conveyance without cost, the water-sewer district's water system and to operate the same to provide water for the domestic use of the irrigation district residents. As a part of its acceptance of the conveyance the irrigation district must agree to relieve the water-sewer district of responsibility for maintenance and repair of the system. Any such water-sewer district is authorized to make such a conveyance if all indebtedness of the water-sewer district, except local improvement district bonds, has been paid and the conveyance has been approved by a majority of the water-sewer district's voters voting at a general or special election.

(9) To approve and condition placement of hydroelectric generation facilities by entities other than the district on water conveyance facilities operated or maintained by the district.

This section shall not be construed as in any manner abridging any other powers of an irrigation district conferred by law.

Passed by the House January 27, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

## CHAPTER 3

[House Bill 1607]

### UNLAWFUL DETAINER ACTIONS—SERVICE OF SUMMONS

AN ACT Relating to alternative means of service in forcible entry and forcible and unlawful detainer actions; and adding a new section to chapter 59.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 59.12 RCW to read as follows:

(1) When the plaintiff, after the exercise of due diligence, is unable to personally serve the summons on the defendant or defendants, the court may authorize the alternative means of service described in this section.

(2) Upon filing of an affidavit from the person or persons attempting service describing those attempts, and the filing of an affidavit from the plaintiff, plaintiff's agent, or plaintiff's attorney stating the belief that the defendant or defendants cannot be found, the court may enter an order authorizing service of the summons as follows:

(a) The summons and complaint must be posted in a conspicuous place on the premises unlawfully held not less than nine days from the return date stated in the summons; and

(b) Copies of the summons and complaint must be deposited in the mail, postage prepaid, by both regular mail and certified mail directed to the defendant or defendants' last known address not less than nine days from the return date stated in the summons.

(3) When service on the defendant or defendants is accomplished by this alternative procedure, the court's jurisdiction is limited to restoring possession of the premises to the plaintiff and no money judgment may be entered against the defendant or defendants until jurisdiction over the defendant or defendants is obtained.

Passed by the House February 5, 2014.

Passed by the Senate February 26, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

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## CHAPTER 4

[Substitute House Bill 1634]

### PROPERTY TAX LEVY LIMIT—SOLAR, BIOMASS, AND GEOTHERMAL FACILITIES

AN ACT Relating to including the value of solar, biomass, and geothermal facilities in the property tax levy limit calculation; amending RCW 84.55.010, 84.55.015, 84.55.020, 84.55.030, and 84.55.120; and creating a new section.

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

**Sec. 1.** RCW 84.55.010 and 2006 c 184 s 1 are each amended to read as follows:

Except as provided in this chapter, the levy for a taxing district in any year ~~((shall))~~ must be set so that the regular property taxes payable in the following year ~~((shall))~~ does not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year by the increase in assessed value in that district resulting from:

(1) New construction ~~((;))~~;

(2) Increases in assessed value due to construction of ~~((electric generation))~~ wind turbine, solar, biomass, and geothermal facilities ~~((classified as personal property))~~, if such facilities generate electricity and the property is not included elsewhere under this section for purposes of providing an additional dollar amount. The property may be classified as real or personal property;

(3) Improvements to property ~~((;))~~; and

(4) Any increase in the assessed value of state-assessed property ~~((by the regular property tax levy rate of that district for the preceding year))~~.

**Sec. 2.** RCW 84.55.015 and 2006 c 184 s 2 are each amended to read as follows:

If a taxing district has not levied since 1985 and elects to restore a regular property tax levy subject to applicable statutory limitations then such first restored levy ~~((shall))~~ must be set so that the regular property tax payable ~~((shall))~~ does not exceed the amount which was last levied, plus an additional dollar amount calculated by multiplying the property tax rate which is proposed to be restored, or the maximum amount which could be lawfully levied in the year such a restored levy is proposed, by the increase in assessed value in the district since the last levy resulting from:

(1) New construction ~~((;))~~;

(2) Increases in assessed value due to construction of ((electric generation)) wind turbine, solar, biomass, and geothermal facilities ((classified as personal property)), if such facilities generate electricity and the property is not included elsewhere under this section for purposes of providing an additional dollar amount. The property may be classified as real or personal property;

(3) Improvements to property((?)); and

(4) Any increase in the assessed value of state-assessed property ((by the property tax rate which is proposed to be restored, or the maximum amount which could be lawfully levied in the year such a restored levy is proposed)).

**Sec. 3.** RCW 84.55.020 and 2006 c 184 s 3 are each amended to read as follows:

Notwithstanding the limitation set forth in RCW 84.55.010, the first levy for a taxing district created from consolidation of similar taxing districts ((shall)) must be set so that the regular property taxes payable in the following year ((shall)) do not exceed the limit factor multiplied by the sum of the amount of regular property taxes lawfully levied for each component taxing district in the highest of the three most recent years in which such taxes were levied for such district plus the additional dollar amount calculated by multiplying the regular property tax rate of each component district for the preceding year by the increase in assessed value in each component district resulting from;

(1) New construction((?));

(2) Increases in assessed value due to construction of ((electric generation)) wind turbine, solar, biomass, and geothermal facilities ((classified as personal property)), if such facilities generate electricity and the property is not included elsewhere under this section for purposes of providing an additional dollar amount. The property may be classified as real or personal property;

(3) Improvements to property((?)); and

(4) Any increase in the assessed value of state-assessed property ((by the regular property tax rate of each component district for the preceding year)).

**Sec. 4.** RCW 84.55.030 and 2006 c 184 s 4 are each amended to read as follows:

For the first levy for a taxing district following annexation of additional property, the limitation set forth in RCW 84.55.010 ((shall)) must be increased by an amount equal to (((+))) the aggregate assessed valuation of the newly annexed property as shown by the current completed and balanced tax rolls of the county or counties within which such property lies, multiplied by (((=))) the dollar rate that would have been used by the annexing unit in the absence of such annexation, plus (((=))) the additional dollar amount calculated by multiplying the regular property tax levy rate of that annexing taxing district for the preceding year by the increase in assessed value in the annexing district resulting from;

(1) New construction((?));

(2) Increases in assessed value due to construction of ((electric generation)) wind turbine, solar, biomass, and geothermal facilities ((classified as personal property)), if such facilities generate electricity and the property is not included elsewhere under this section for purposes of providing an additional dollar amount. The property may be classified as real or personal property;

(3) Improvements to property((?)); and

(4) ~~Any increase in the assessed value of state-assessed property ((by the regular property tax levy rate of that annexing taxing district for the preceding year)).~~

**Sec. 5.** RCW 84.55.120 and 2006 c 184 s 6 are each amended to read as follows:

(1) A taxing district, other than the state, that collects regular levies (~~(shall)~~) must hold a public hearing on revenue sources for the district's following year's current expense budget. The hearing must include consideration of possible increases in property tax revenues and (~~(shall)~~) must be held prior to the time the taxing district levies the taxes or makes the request to have the taxes levied. The county legislative authority, or the taxing district's governing body if the district is a city, town, or other type of district, (~~(shall)~~) must hold the hearing. For purposes of this section, "current expense budget" means that budget which is primarily funded by taxes and charges and reflects the provision of ongoing services. It does not mean the capital, enterprise, or special assessment budgets of cities, towns, counties, or special purpose districts.

(2) If the taxing district is otherwise required to hold a public hearing on its proposed regular tax levy, a single public hearing may be held on this matter.

(3)(a) ~~Except as provided in (b) of this subsection (3), no increase in property tax revenue(, other than that resulting from the addition of new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, and improvements to property and any increase in the value of state-assessed property, may be authorized by a taxing district, other than the state, except by adoption of a separate ordinance or resolution, pursuant to notice, specifically authorizing the increase in terms of both dollars and percentage. The ordinance or resolution may cover a period of up to two years, but the ordinance shall specifically state for each year the dollar increase and percentage change in the levy from the previous year)) may be authorized by a taxing district, other than the state, except by adoption of a separate ordinance or resolution, pursuant to notice, specifically authorizing the increase in terms of both dollars and percentage. The ordinance or resolution may cover a period of up to two years, but the ordinance must specifically state for each year the dollar increase and percentage change in the levy from the previous year.~~

(b) Exempt from the requirements of (a) of this subsection are increases in revenue resulting from the addition of:

(i) New construction;

(ii) Increases in assessed value due to construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under this section for purposes of providing an additional dollar amount. The property may be classified as real or personal property;

(iii) Improvements to property; and

(iv) Any increase in the value of state-assessed property.

**NEW SECTION. Sec. 6.** This act applies to taxes levied for collection in 2015 and thereafter.

Passed by the House February 7, 2014.

Passed by the Senate March 4, 2014.



Approved by the Governor March 12, 2014.  
Filed in Office of Secretary of State March 12, 2014.

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## CHAPTER 5

[Substitute House Bill 2057]

### ARREST WITHOUT WARRANT

AN ACT Relating to arrest without warrant; and amending RCW 10.31.100.

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

**Sec. 1.** RCW 10.31.100 and 2013 2nd sp.s. c 35 s 22 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of ~~((the))~~ an officer, except as provided in subsections (1) through (11) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, 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 or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from 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, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has

occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse; or

(d) The person has violated RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol or THC in their system;

(f) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(g) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter 79A.60 RCW.

(6) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(7) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(8) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(9) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(10) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(11) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(12) Except as specifically provided in subsections (2), (3), (4), and (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(13) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (9) of this section if the police officer acts in good faith and without malice.

Passed by the House February 12, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

## CHAPTER 6

[House Bill 2100]

### LICENSE PLATES—SEATTLE UNIVERSITY

AN ACT Relating to Seattle University special license plates; amending RCW 46.18.200, 46.17.220, and 46.68.420; reenacting and amending RCW 46.18.060; adding a new section to chapter 46.04 RCW; and providing an effective date.

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

**Sec. 1.** RCW 46.18.200 and 2013 c 286 s 1 are each amended to read as follows:

(1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

| LICENSE PLATE                            | DESCRIPTION, SYMBOL, OR ARTWORK  |
|--|--|
| 4-H                                      | Displays the "4-H" logo.   |
| Armed forces collection                  | Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard. |
| Endangered wildlife                      | Displays a symbol or artwork symbolizing endangered wildlife in Washington state.  |
| Gonzaga University alumni association    | Recognizes the Gonzaga University alumni association.  |
| Helping kids speak                       | Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.  |
| Keep kids safe                           | Recognizes efforts to prevent child abuse and neglect.   |
| Law enforcement memorial                 | Honors law enforcement officers in Washington killed in the line of duty.  |
| Music matters                            | Displays the "Music Matters" logo.   |
| Professional firefighters and paramedics | Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.   |
| Seattle Seahawks                         | Displays the "Seattle Seahawks" logo.  |
| Seattle Sounders FC                      | Displays the "Seattle Sounders FC" logo.   |
| <u>Seattle University</u>                | <u>Recognizes Seattle University.</u>  |
| Share the road                           | Recognizes an organization that promotes bicycle safety and awareness education.   |
| Ski & ride Washington                    | Recognizes the Washington snowsports industry.   |
| State flower                             | Recognizes the Washington state flower.  |

|                                  |  |
|----------------------------------|--|
| Volunteer firefighters           | Recognizes volunteer firefighters.   |
| Washington lighthouses           | Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.  |
| Washington state parks           | Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.   |
| Washington's national park fund  | Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks. |
| Washington's wildlife collection | Recognizes Washington's wildlife.  |
| We love our pets                 | Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.   |
| Wild on Washington               | Symbolizes wildlife viewing in Washington state.   |

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction.

**Sec. 2.** RCW 46.17.220 and 2013 c 286 s 2 are each amended to read as follows:

(1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

| PLATE TYPE                                     | INITIAL FEE    | RENEWAL FEE    | DISTRIBUTED UNDER              |
|--|----------------|----------------|--------------------------------|
| (a) 4-H  | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (b) Amateur radio license                      | \$ 5.00        | N/A            | RCW 46.68.070                  |
| (c) Armed forces                               | \$ 40.00       | \$ 30.00       | RCW 46.68.425                  |
| (d) Baseball stadium                           | \$ 40.00       | \$ 30.00       | Subsection (2) of this section |
| (e) Collector vehicle                          | \$ 35.00       | N/A            | RCW 46.68.030                  |
| (f) Collegiate                                 | \$ 40.00       | \$ 30.00       | RCW 46.68.430                  |
| (g) Endangered wildlife                        | \$ 40.00       | \$ 30.00       | RCW 46.68.425                  |
| (h) Gonzaga University alumni association      | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (i) Helping kids speak                         | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (j) Horseless carriage                         | \$ 35.00       | N/A            | RCW 46.68.030                  |
| (k) Keep kids safe                             | \$ 45.00       | \$ 30.00       | RCW 46.68.425                  |
| (l) Law enforcement memorial                   | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (m) Military affiliate radio system            | \$ 5.00        | N/A            | RCW 46.68.070                  |
| (n) Music matters                              | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (o) Professional firefighters and paramedics   | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (p) Ride share                                 | \$ 25.00       | N/A            | RCW 46.68.030                  |
| (q) Seattle Seahawks                           | \$40.00        | \$30.00        | RCW 46.68.420                  |
| (r) Seattle Sounders FC                        | \$40.00        | \$30.00        | RCW 46.68.420                  |
| (s) <u>Seattle University</u>                  | <u>\$40.00</u> | <u>\$30.00</u> | <u>RCW 46.68.420</u>           |
| (t) Share the road                             | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (( <del>t</del> )) (u) Ski & ride Washington   | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (( <del>tt</del> )) (v) Square dancer          | \$ 40.00       | N/A            | RCW 46.68.070                  |
| (( <del>tv</del> )) (w) State flower           | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (( <del>tw</del> )) (x) Volunteer firefighters | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (( <del>tx</del> )) (y) Washington lighthouses | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (( <del>ty</del> )) (z) Washington state parks | \$ 40.00       | \$ 30.00       | RCW 46.68.425                  |

|  |          |          |               |
|--|----------|----------|---------------|
| <del>((z))</del> <u>(aa)</u> Washington's national parks       | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((aa))</del> <u>(bb)</u> Washington's wildlife collection | \$ 40.00 | \$ 30.00 | RCW 46.68.425 |
| <del>((bb))</del> <u>(cc)</u> We love our pets                 | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((ee))</del> <u>(dd)</u> Wild on Washington               | \$ 40.00 | \$ 30.00 | RCW 46.68.425 |

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must 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.

**Sec. 3.** RCW 46.68.420 and 2013 c 286 s 3 are each amended to read as follows:

(1) The department shall:

- (a) Collect special license plate fees established under RCW 46.17.220;
- (b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and
- (c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) 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 special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

| ACCOUNT                               | CONDITIONS FOR USE OF FUNDS   |
|---------------------------------------|---|
| 4-H programs                          | Support Washington 4-H programs   |
| Gonzaga University alumni association | Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University  |
| Helping kids speak                    | Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development  |
| Law enforcement memorial              | Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers |

|                                   |   |
|-----------------------------------|---|
| Lighthouse environmental programs | Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents  |
| Music matters awareness           | Promote music education in schools throughout Washington  |
| Seattle Seahawks                  | Provide funds to InvestED to encourage secondary students who have economic needs to stay in school, return to school, or get involved within their learning community  |
| Seattle Sounders FC               | Provide funds to Washington state mentors and the association of Washington generals created in RCW 43.15.030 in the following manner: (a) Seventy percent and the remaining proceeds, if any, to Washington state mentors, to increase the number of mentors in the state by offering mentoring grants throughout Washington state that foster positive youth development and academic success, with up to twenty percent of these proceeds authorized for program administration costs; and (b) up to thirty percent, not to exceed forty-thousand dollars annually as adjusted for inflation by the office of financial management, to the association of Washington generals, to develop Washington state educational, veterans, international relations, and civics projects and to recognize the outstanding public service of individuals or groups in the state of Washington |
| <u>Seattle University</u>         | <u>Fund scholarships for students attending or planning to attend Seattle University</u>  |
| Share the road                    | Promote bicycle safety and awareness education in communities throughout Washington   |
| Ski & ride Washington             | Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs   |



|  |   |
|--|---|
| State flower   | Support Meerkerk Rhododendron Gardens and provide for grants to other qualified nonprofit organizations' efforts to preserve rhododendrons  |
| Volunteer firefighters                                   | Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need   |
| Washington state council of firefighters benevolent fund | Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need   |
| Washington's national park fund                          | Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks |
| We love our pets   | Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population   |

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) 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 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1).

**Sec. 4.** RCW 46.18.060 and 2013 c 306 s 703 and 2013 c 286 s 5 are each reenacted and amended to read as follows:

(1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee.

(3) In order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2015. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The limitations under subsection (3) of this section do not apply to the following special license plates:

(a) 4-H license plates created under RCW 46.18.200;

(b) Gold star license plates created under RCW 46.18.245;

(c) Music Matters license plates created under RCW 46.18.200;

(d) Seattle Seahawks license plates created under RCW 46.18.200;

(e) Seattle Sounders FC license plates created under RCW 46.18.200;

(f) Seattle University license plates created under RCW 46.18.200;

(g) State flower license plates created under RCW 46.18.200;

~~((g))~~ (h) Volunteer firefighter license plates created under RCW 46.18.200.

NEW SECTION. Sec. 5. A new section is added to chapter 46.04 RCW to read as follows:

"Seattle University license plates" means special license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing Seattle University.

NEW SECTION. Sec. 6. This act takes effect January 1, 2015.

Passed by the House February 11, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

## CHAPTER 7

[House Bill 2106]

### COUNTY OFFICE ELECTIONS—PRIMARIES

AN ACT Relating to holding a primary for county offices; and amending RCW 29A.52.112.

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

**Sec. 1.** RCW 29A.52.112 and 2013 c 11 s 50 are each amended to read as follows:

(1) A primary is a first stage in the public process by which voters elect candidates to public office.

(2) Whenever candidates for a partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter. Based upon votes cast at the primary, the top two candidates will be certified as qualified to appear on the general election ballot, unless only one candidate qualifies as provided in RCW 29A.36.170.

(3) No primary may be held for any single county partisan office to fill an unexpired term if, after the last day allowed for candidates to withdraw, only one candidate has filed for the position.

(4) For partisan office, if a candidate has expressed a party preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots as set forth in rules of the secretary of state. A candidate may choose to express no party preference. Any party preferences are shown for the information of voters only and may in no way limit the options available to voters.

Passed by the House January 27, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

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## CHAPTER 8

[House Bill 2140]

### CREDIT UNIONS—MERGERS

AN ACT Relating to credit unions' mergers; and amending RCW 31.12.461.

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

**Sec. 1.** RCW 31.12.461 and 2013 c 34 s 10 are each amended to read as follows:

(1) For purposes of this section, the merging credit union is the credit union whose charter ceases to exist upon merger with the continuing credit union. The continuing credit union is the credit union whose charter continues upon merger with the merging credit union.

(2) A credit union may be merged with another credit union with the approval of the director and in accordance with requirements the director may prescribe. The merger must be approved by a majority vote of the board of each credit union and a ~~((two-thirds))~~ majority vote of those members of the merging credit union voting on the merger at a membership meeting. The requirement of approval by the members of the merging credit union may be waived by the director if the merging credit union is in imminent danger of insolvency.

(3) The property, rights, and interests of the merging credit union transfer to and vest in the continuing credit union without deed, endorsement, or instrument of transfer, although instruments of transfer may be used if their use is deemed appropriate. The debts and obligations of the merging credit union that are known or reasonably should be known are assumed by the continuing credit union. The continuing credit union shall cause to be published notice of merger once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the merging credit union is located. The notice of merger must also inform creditors of the merging credit union how to make a claim on the continuing credit union, and that if a claim is

not made upon the continuing credit union within thirty days of the last date of publication, creditors' claims that are not known by the continuing credit union may be barred. Except for claims filed as requested by the notice, or debts or obligations that are known or reasonably should be known by the continuing credit union, the debts and obligations of the merging credit union are discharged. Upon merger, the charter of the merging credit union ceases to exist.

(4) Mergers are effective after the thirty-day notice period to creditors and all regulatory waiting periods have expired, and upon filing of the credit union's articles of merger by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

Passed by the House February 11, 2014.

Passed by the Senate February 26, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

## CHAPTER 9

[Engrossed Substitute House Bill 2191]

### CHILD CARE FACILITIES—INSPECTIONS—COMPLIANCE

AN ACT Relating to compliance with inspections of child care facilities; and adding a new section to chapter 43.215 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 43.215 RCW to read as follows:

(1) Before requiring any alterations to a child care facility due to inconsistencies with requirements in chapter 19.27 RCW, the department shall:

(a) Consult with the city or county enforcement official; and

(b) Receive written verification from the city or county enforcement official that the alteration is required.

(2) The department's consultation with the city or county enforcement official is limited to licensed child care space.

(3) Unless there is imminent danger to children or staff, the department may not modify, suspend, or revoke a child care license or business activities while the department is waiting to:

(a) Consult with the city or county enforcement official under subsection (1)(a) of this section; or

(b) Receive written verification from the city or county enforcement official that the alteration is required under subsection (1)(b) of this section.

(4) For the purposes of this section, "child care facility" means a family day care home, school-age care, and child day care center.

Passed by the House February 11, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

## CHAPTER 10

[Substitute House Bill 2195]

## COMPETENCY RESTORATION—JAIL-INVOLUNTARY MEDICATION

AN ACT Relating to involuntary medication for maintaining the level of restoration in jail; amending RCW 10.77.092 and 10.77.065; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that there is currently no clear language authorizing courts to order involuntary medications in order to maintain the level of competency restoration in the jail following a competency restoration period and subsequent discharge from a state hospital. This act specifies that maintenance of competency in jail is a purpose for which the court may order a criminal defendant facing serious charges to be involuntarily medicated.

**Sec. 2.** RCW 10.77.092 and 2008 c 213 s 2 are each amended 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 10.77.084 and for maintaining the level of restoration in the jail following the restoration period, 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.

**Sec. 3.** RCW 10.77.065 and 2013 c 214 s 1 are each amended to read as follows:

(1)(a)(i) The expert conducting the evaluation shall provide his or her report and recommendation to the court in which the criminal proceeding is pending. For a competency evaluation of a defendant who is released from custody, if the evaluation cannot be completed within twenty-one days due to a lack of cooperation by the defendant, the evaluator shall notify the court that he or she is unable to complete the evaluation because of such lack of cooperation.

(ii) A copy of the report and recommendation shall be provided to the designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held, or if there is no professional person, to the person designated under (a)(iv) of this subsection. Upon request, the evaluator shall also provide copies of any source documents relevant to the evaluation to the designated mental health professional.

(iii) Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant. If the defendant is discharged to the custody of a local correctional facility, the local correctional facility must continue the medication regimen prescribed by the facility, when clinically appropriate, unless the defendant refuses to cooperate with medication and an involuntary medication order by the court has not been entered.

(iv) If there is no professional person at the local correctional facility, the local correctional facility shall designate a professional person as defined in RCW 71.05.020 or, in cooperation with the regional support network, a professional person at the regional support network to receive the report and recommendation.

(v) Upon commencement of a defendant's evaluation in the local correctional facility, the local correctional facility must notify the evaluator of the name of the professional person, or person designated under (a)(iv) of this subsection, to receive the report and recommendation.

(b) If the evaluator concludes, under RCW 10.77.060(3)(f), the person should be evaluated by a designated mental health professional under chapter 71.05 RCW, the court shall order such evaluation be conducted prior to release from confinement when the person is acquitted or convicted and sentenced to confinement for twenty-four months or less, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

(2) The designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (1)(a) of this section.

(3) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the designated mental health professional under subsection (2) of this section to the secretary.

(4) A facility conducting a civil commitment evaluation under RCW 10.77.086(4) or 10.77.088(1)(b)(ii) that makes a determination to release the person instead of filing a civil commitment petition must provide written notice to the prosecutor and defense attorney at least twenty-four hours prior to release. The notice may be given by electronic mail, facsimile, or other means reasonably likely to communicate the information immediately.

(5) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services under this chapter may also be disclosed to the courts solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

Passed by the House February 12, 2014.

Passed by the Senate February 26, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

## CHAPTER 11

[House Bill 2228]

### VOCATIONAL SCHOOLS—CONSUMER PROTECTION PROCEDURES

AN ACT Relating to providing parity of consumer protection procedures for all students attending licensed private vocational schools; and amending RCW 28C.10.030, 28C.10.050, 28C.10.060, 28C.10.082, 28C.10.084, 28C.10.110, and 28C.10.120.

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

**Sec. 1.** RCW 28C.10.030 and 2012 c 229 s 576 are each amended to read as follows:

This chapter does not apply to:

(1) Bona fide trade, business, professional, or fraternal organizations (~~(sponsoring)~~) conducting educational programs primarily for that organization's membership or offered by that organization on a no-fee basis;

(2) Entities offering education that is exclusively avocational or recreational;

(3) Education not requiring payment of money or other consideration if this education is not advertised or promoted as leading toward educational credentials;

(4) Entities that are established, operated, and governed by this state or its political subdivisions under Title 28A(~~(s)~~) or 28B(~~(s) or 28C~~) RCW or this title;

(5) Degree-granting programs in compliance with the rules of the student achievement council;

(6) Any other entity to the extent that it has been exempted from some or all of the provisions of this chapter under RCW 28C.10.100;

(7) Entities not otherwise exempt that are of a religious character, but only as to those educational programs exclusively devoted to religious or theological objectives and represented accurately in institutional catalogs or other official publications;

(8) Entities offering only courses certified by the federal aviation administration;

(9) Barber and cosmetology schools licensed under chapter 18.16 RCW;

(10) Entities which only offer courses approved to meet the continuing education requirements for licensure under chapter 18.04, 18.79, or 48.17 RCW; and

(11) Entities not otherwise exempt offering only workshops or seminars lasting no longer than three calendar days.

**Sec. 2.** RCW 28C.10.050 and 2013 c 39 s 15 are each amended to read as follows:

(1) The agency shall adopt by rule minimum standards for entities operating private vocational schools. The minimum standards shall include, but not be limited to, requirements to assess whether a private vocational school is eligible to obtain and maintain a license in this state.

(2) The requirements adopted by the agency shall, at a minimum, require a private vocational school to:

(a) Disclose to the agency information about its ownership and financial position and to demonstrate to the agency that the school is financially viable and responsible and that it has sufficient financial resources to fulfill its commitments to students. Financial disclosures provided to the agency shall not be subject to public disclosure under chapter 42.56 RCW;

(b) Follow a uniform statewide cancellation and refund policy as specified by the agency;

(c) Disclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions. The agency shall specify what information is required;

(d) Use an enrollment contract or agreement that includes: (i) The school's cancellation and refund policy, (ii) a brief statement that the school is licensed under this chapter and that inquiries, concerns, or complaints may be made to the agency, and (iii) other necessary information as determined by the agency;

(e) Describe accurately and completely in writing to students before their enrollment prerequisites and requirements for (i) completing successfully the programs of study in which they are interested and (ii) qualifying for the fields of employment for which their education is designed;

(f) Comply with the requirements of RCW 28C.10.084;

(g) Assess the basic skills and relevant aptitudes of each potential student to determine that a potential student has the basic skills and relevant aptitudes necessary to complete and benefit from the program in which the student plans to enroll, including but not limited to administering a United States department of education-approved English as a second language exam before enrolling students for whom English is a second language unless the students provide proof of graduation from a United States high school or proof of completion of a high school equivalency certificate as provided in RCW 28B.50.536 in English or results of another academic assessment determined appropriate by the agency. Guidelines for such assessments shall be developed by the agency, in consultation with the schools;

(h) Discuss with each potential student the potential student's obligations in signing any enrollment contract and/or incurring any debt for educational purposes. The discussion shall include the inadvisability of acquiring an



excessive educational debt burden that will be difficult to repay given employment opportunities and average starting salaries in the potential student's chosen occupation;

(i) Ensure that any enrollment contract between the private vocational school and its students has an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with (h) of this subsection and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days, excluding Sundays and holidays, following signature of the enrollment contract by both parties; and

(j) Comply with the requirements related to qualifications of administrators and instructors.

(3) The agency may deny a private vocational school's application for licensure if the school fails to meet the requirements in this section.

(4) The agency may determine that a licensed private vocational school or a particular program of a private vocational school is at risk of closure or termination if:

(a) There is a pattern or history of substantiated student complaints filed with the agency pursuant to RCW 28C.10.120; or

(b) The private vocational school fails to meet minimum licensing requirements and has a pattern or history of failing to meet the minimum requirements.

(5) If the agency determines that a private vocational school or a particular program is at risk of closure or termination, the agency shall require the school to take corrective action.

**Sec. 3.** RCW 28C.10.060 and 1987 c 459 s 4 are each amended to read as follows:

Any entity desiring to operate a private vocational school shall apply for a license to the agency on a form provided by the agency. The agency shall issue a license if the school:

(1) Files a completed application with information satisfactory to the agency. Misrepresentation by an applicant shall be grounds for the agency, at its discretion, to deny or revoke a license.

(2) Complies with the requirements for the tuition recovery trust fund under RCW 28C.10.084.

(3) Pays the required fees.

(4) Meets the minimum standards adopted by the agency under RCW 28C.10.050.

Licenses shall be valid for one year from the date of issue unless revoked or suspended. If a school fails to file a completed renewal application at least thirty days before the expiration date of its current license the school shall be subject to payment of a late filing fee fixed by the agency.

**Sec. 4.** RCW 28C.10.082 and 2013 2nd sp.s. c 4 s 965 are each amended to read as follows:

The tuition recovery trust fund is hereby established in the custody of the state treasurer. The agency shall deposit in the fund all moneys received under

RCW 28C.10.084. Moneys in the fund may be spent only for the purposes under RCW 28C.10.084. Disbursements from the fund shall be on authorization of the agency. Disbursements from the fund shall only be used to reimburse students who are Washington state residents, or agencies or businesses that pay tuition and fees on behalf of Washington students. During the 2013-2015 fiscal biennium, the legislature may transfer from the tuition recovery trust fund to the state general fund such amounts as reflect the excess fund balance in the fund. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

**Sec. 5.** RCW 28C.10.084 and 2001 c 23 s 2 are each amended to read as follows:

(1) The agency shall establish, maintain, and administer a tuition recovery trust fund. All funds collected for the tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a private vocational school licensed under this chapter, ~~((or,))~~ in the case of a minor, his or her parents or guardian, or an agency or business that paid tuition and fees on behalf of Washington state students, for purposes including but not limited to the settlement of claims related to school closures under subsection (10) of this section and the settlement of claims under RCW 28C.10.120. The fund shall be liable for settlement of claims and costs of administration but shall not be liable to pay out or recover penalties assessed under RCW 28C.10.130 or 28C.10.140. No liability accrues to the state of Washington from claims made against the fund.

(2) By June 30, 1998, a minimum operating balance of one million dollars shall be achieved in the fund and maintained thereafter. If disbursements reduce the operating balance below two hundred thousand dollars at any time before June 30, 1998, or below one million dollars thereafter, each participating owner shall be assessed a pro rata share of the deficiency created, based upon the incremental scale created under subsection (6) of this section for each private vocational school. The agency shall adopt schedules of times and amounts for effecting payments of assessment.

(3) In order for a private vocational school to be and remain licensed under this chapter each owner shall, in addition to other requirements under this chapter, make cash deposits on behalf of the school into a tuition recovery trust fund as a means to assure payment of claims brought under this chapter.

(4) The amount of liability that can be satisfied by this fund on behalf of each private vocational school licensed under this chapter shall be the amount of unearned prepaid tuition ~~((in possession of the owner))~~ and fees. If the claimant provides evidence to the agency of the lack of availability to continue his or her program of study at another institution, the agency's executive director or the executive director's designee has the authority to reimburse the student, agency, or business up to the full value of tuition and fees paid to date, subject to subsection (10) of this section. The agency may use the fund to pay for prior learning assessments for students who choose to attend another institution.

(5) The fund's liability with respect to each participating private vocational school commences on the date of the initial deposit into the fund made on its behalf and ceases one year from the date the school is no longer licensed under this chapter.

(6) The agency shall adopt by rule a matrix for calculating the deposits into the fund on behalf of each vocational school. Proration shall be determined by factoring the school's share of liability in proportion to the aggregated liability of all participants under the fund by grouping such prorations under the incremental scale created by subsection (4) of this section. Expressed as a percentage of the total liability, that figure determines the amount to be contributed when factored into a fund containing one million dollars. The total amount of its prorated share, minus the amount paid for initial capitalization, shall be payable in up to twenty increments over a ten-year period, commencing with the sixth month after the initial capitalization deposit has been made on behalf of the school. Additionally, the agency shall require deposits for initial capitalization, under which the amount each owner deposits is proportionate to the school's share of two hundred thousand dollars, employing the matrix developed under this subsection.

(7) No vested right or interests in deposited funds is created or implied for the depositor, either at any time during the operation of the fund or at any such future time that the fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. The agency shall maintain the fund, serve appropriate notices to affected owners when scheduled deposits are due, collect deposits, and make disbursements to settle claims against the fund. When the aggregated deposits total five million dollars and the history of disbursements justifies such modifications, the agency may at its own option reduce the schedule of deposits whether as to time, amount, or both and the agency may also entertain proposals from among the licensees with regard to disbursing surplus funds for such purposes as vocational scholarships.

(8) Based on annual financial data supplied by the owner, the agency shall determine whether the increment assigned to that private vocational school on the incremental scale established under subsection (6) of this section has changed. If an increase or decrease in gross annual tuition income has occurred, a corresponding change in the school's incremental position and contribution schedule shall be made before the date of the owner's next scheduled deposit into the fund. Such adjustments shall only be calculated and applied annually.

(9) If the majority ownership interest in a private vocational school is conveyed through sale or other means into different ownership, all contributions made to the date of transfer remain in the fund. The new owner shall continue to make contributions to the fund until the original ten-year cycle is completed. All tuition recovery trust fund contributions shall remain with the private vocational school transferred, and no additional cash deposits may be required beyond the original ten-year contribution cycle.

(10)(a) To settle claims adjudicated under RCW 28C.10.120 and claims resulting when a private vocational school ceases to provide educational services, the agency may make disbursements from the fund. Students enrolled under a training contract executed between a school and a public or private agency or business are not eligible to make a claim against the fund until January 1, 2016.

(b) In addition to the processes described for making reimbursements related to claims under RCW 28C.10.120, the following procedures are established to deal with reimbursements related to school closures:

~~((+))~~ (i) The agency shall attempt to notify all potential claimants. The unavailability of records and other circumstances surrounding a school closure may make it impossible or unreasonable for the agency to ascertain the names and whereabouts of each potential claimant but the agency shall make reasonable inquiries to secure that information from all likely sources. The agency shall then proceed to settle the claims on the basis of information in its possession. The agency is not responsible or liable for claims or for handling claims that may subsequently appear or be discovered.

~~((+))~~ (ii) Thirty days after identified potential claimants have been notified, if a claimant refuses or neglects to file a claim verification as requested in such notice, the agency ~~(shall)~~ may be relieved of further duty or action on behalf of the claimant under this chapter. The executive director of the agency or the executive director's designee will determine if an exemption to the thirty days shall be granted if the claimant furnishes proof of an extraordinary or exigent circumstance.

~~((+))~~ (iii) After verification and review, the agency may disburse funds from the tuition recovery trust fund to settle or compromise the claims for an amount up to the value of unearned prepaid tuition and fees. If the claimant provides evidence to the agency of the lack of availability to continue his or her program of study at another institution, the agency's executive director or the executive director's designee has the authority to reimburse the student, agency, or business up to the full value of tuition and fees paid to date, subject to (a) of this subsection. The agency may use the fund to pay for prior learning assessments for students who choose to attend another institution. ~~(However, the liability of the fund for claims against the closed school shall not exceed the amount of unearned prepaid tuition in the possession of the owner.~~

~~((+))~~ (iv) In the instance of claims against a closed school, the agency shall seek to recover such disbursed funds from the assets of the defaulted owner, including but not limited to asserting claims as a creditor in bankruptcy proceedings.

(11) When funds are disbursed to settle claims against a licensed private vocational school, the agency shall make demand upon the owner for recovery. The agency shall adopt schedules of times and amounts for effecting recoveries. An owner's failure to perform subjects the school's license to suspension or revocation under RCW 28C.10.050 in addition to any other available remedies.

(12) For purposes of this section, "owner" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust having a controlling ownership interest in a private vocational school.

**Sec. 6.** RCW 28C.10.110 and 2001 c 23 s 3 are each amended to read as follows:

(1) It is a violation of this chapter for an entity operating a private vocational school to engage in an unfair business practice. The agency may deny, revoke, or suspend the license of any entity that is found to have engaged in a substantial number of unfair business practices or that has engaged in significant unfair business practices.

(2) It is an unfair business practice for an entity operating a private vocational school or an agent employed by a private vocational school to:

~~((+))~~ (a) Fail to comply with the terms of a student enrollment contract or agreement;

~~((2))~~ (b) Use an enrollment contract form, catalog, brochure, or similar written material affecting the terms and conditions of student enrollment other than that previously submitted to the agency and authorized for use;

~~((3))~~ (c) Advertise in the help wanted section of a newspaper or otherwise represent falsely, directly or by implication, that the school is an employment agency, is making an offer of employment or otherwise is attempting to conceal the fact that what is being represented are course offerings of a school;

~~((4))~~ (d) Represent falsely, directly or by implication, that an educational program is approved by a particular industry or that successful completion of the program qualifies a student for admission to a labor union or similar organization or for the receipt of a state license in any business, occupation, or profession;

~~((5))~~ (e) Represent falsely, directly or by implication, that a student who successfully completes a course or program of instruction may transfer credit for the course or program to any institution of higher education;

~~((6))~~ (f) Represent falsely, directly or by implication, in advertising or in any other manner, the school's size, location, facilities, equipment, faculty qualifications, number of faculty, or the extent or nature of any approval received from an accrediting association;

~~((7))~~ (g) Represent that the school is approved, recommended, or endorsed by the state of Washington or by the agency, except the fact that the school is authorized to operate under this chapter may be stated;

~~((8))~~ (h) Provide prospective students with any testimonial, endorsement, or other information which has the tendency to mislead or deceive prospective students or the public regarding current practices of the school, current conditions for employment opportunities, or probable earnings in the occupation for which the education was designed;

~~((9))~~ (i) Designate or refer to sales representatives as "counselors," "advisors," or similar terms which have the tendency to mislead or deceive prospective students or the public regarding the authority or qualifications of the sales representatives;

~~((10))~~ (j) Make or cause to be made any statement or representation in connection with the offering of education if the school or agent knows or reasonably should have known the statement or representation to be false, substantially inaccurate, or misleading;

~~((11))~~ (k) Engage in methods of advertising, sales, collection, credit, or other business practices which are false, deceptive, misleading, or unfair, as determined by the agency by rule; or

~~((12))~~ (l) Attempt to recruit students in or within forty feet of a building that contains a welfare or unemployment office. Recruiting includes, but is not limited to canvassing and surveying. Recruiting does not include leaving materials at or near an office for a person to pick up of his or her own accord, or handing a brochure or leaflet to a person provided that no attempt is made to obtain a name, address, telephone number, or other data, or to otherwise actively pursue the enrollment of the individual.

~~(It is a violation of this chapter for an entity operating a private vocational school to engage in an unfair business practice. The agency may deny, revoke, or suspend the license of any entity that is found to have engaged in a substantial~~

~~number of unfair business practices or that has engaged in significant unfair business practices:))~~

**Sec. 7.** RCW 28C.10.120 and 2007 c 462 s 3 are each amended to read as follows:

(1) Complaints may be filed under this chapter only by a ~~((person claiming loss of tuition or fees as a result of))~~ current student or exiter of a program or training affected by an unfair business practice. The complaint shall set forth the alleged violation and shall contain information required by the agency on forms provided for that purpose. A complaint may also be filed with the agency by an authorized staff member of the agency or by the attorney general.

(2) The agency shall investigate any complaint under this section and shall first attempt to bring about a negotiated settlement. The agency director or the director's designee may conduct an informal hearing with the affected parties in order to determine whether a violation has occurred.

(3) If the agency finds that the private vocational school or its agent engaged in or is engaging in any unfair business practice, the agency shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties provided under RCW 28C.10.130. If the agency finds that the complainant has suffered loss as a result of the act or practice, the agency may order the violator to pay full or partial restitution of any amounts lost. The loss may include any money paid for tuition, required or recommended course materials, and any reasonable living expenses incurred by the complainant during the time the complainant was enrolled at the school.

(4) The complainant is not bound by the agency's determination of restitution. The complainant may reject that determination and may pursue any other legal remedy.

(5) The violator may, within twenty days of being served any order described under subsection (3) of this section, file an appeal under the administrative procedure act, chapter 34.05 RCW. Timely filing stays the agency's order during the pendency of the appeal. If the agency prevails, the appellant shall pay the costs of the administrative hearing.

(6) If a private vocational school closes without providing adequate notice to its enrolled students, the agency shall provide transition assistance to the school's students including, but not limited to, information regarding: (a) Transfer options available to students; (b) financial aid discharge eligibility and procedures; (c) the labor market, job search strategies, and placement assistance services; and (d) other support services available to students.

Passed by the House February 11, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 12, 2014.

Filed in Office of Secretary of State March 12, 2014.

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## CHAPTER 12

[House Bill 2674]

### MOTOR VEHICLES—QUICK TITLES—PROCESSING BY SUBAGENTS

AN ACT Relating to the processing of quick titles by subagents; and amending RCW 46.12.555.

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

**Sec. 1.** RCW 46.12.555 and 2011 c 326 s 1 are each amended to read as follows:

(1) The application for a quick title of a vehicle must be submitted by the owner or the owner's representative to the department, participating county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

(a) A description of the vehicle, including make, model, vehicle identification number, type of body, and the odometer reading at the time of delivery of the vehicle, when required;

(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; and

(c) Other information as may be required by the department.

(2) The application for a quick title must be signed by the person applying to be the registered owner and be sworn to by that person in the manner described under RCW 9A.72.085. The department must keep a copy of the application.

(3) The application for a quick title must be accompanied by:

(a) All fees and taxes due for an application for a certificate of title, including a quick title service fee under RCW 46.17.160; and

(b) The most recent certificate of title or other satisfactory evidence of ownership.

(4) All applications for quick title must meet the requirements established by the department.

(5) For the purposes of this section, "quick title" means a certificate of title printed at the time of application.

(6) The quick title process authorized under this section may not be used to obtain the first title issued to a vehicle previously designated as a salvage vehicle as defined in RCW 46.04.514.

~~(7) A subagent may process a quick title under this section ((only after (a) the department has instituted a process in which blank certificates of title can be inventoried; (b) the county auditor of the county in which the subagent is located has processed quick titles for a minimum of six months; and (c) the county auditor approves a request from a subagent in its county to process quick titles)) in accordance with rules adopted by the department.~~

Passed by the House February 17, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

## CHAPTER 13

[Substitute House Bill 2309]

### PROPERTY TAX PAYMENT—FAIRNESS AND FLEXIBILITY

AN ACT Relating to providing fairness and flexibility in the payment of property taxes; amending RCW 84.56.020 and 84.56.025; and creating a new section.

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

**Sec. 1.** RCW 84.56.020 and 2013 c 239 s 3 are each amended to read as follows:

(1) The county treasurer must 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. No treasurer may accept tax payments or issue receipts for the same until the treasurer has completed the tax roll for the current year's collection and provided notification of the completion of the roll. Notification may be accomplished electronically, by posting a notice in the office, or through other written communication as determined by the treasurer. All taxes upon real and personal property made payable by the provisions of this title are 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 must include a notice that checks for payment of taxes may be made payable to "Treasurer of . . . . County" or other appropriate office, but tax statements may 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 is 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 is due and payable on or before the thirty-first day of October following and is delinquent after that date.

(5) Except as provided in (c) of this subsection, 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)) delinquent from the date of delinquency until paid. Interest must 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)) delinquent is assessed on the tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent is assessed on the amount of tax delinquent on December 1st of the year in which the tax is due.

(c) If a taxpayer is successfully participating in a payment agreement under subsection (1)(b) of this section, the county treasurer may not assess additional penalties on delinquent taxes that are included within the payment agreement. Interest and penalties that have been assessed prior to the payment agreement remain due and payable as provided in the payment agreement.



(6)(a) When real property taxes become delinquent and prior to the filing of the certificate of delinquency, the treasurer is authorized to assess and collect tax foreclosure avoidance costs.

(b) For the purposes of this section, "tax foreclosure avoidance costs" means those costs that can be identified specifically with the administration of properties subject to and prior to foreclosure. Tax foreclosure avoidance costs include:

(i) Compensation of employees for the time devoted and identified specifically to administering the avoidance of property foreclosure; and

(ii) The cost of materials, services, or equipment acquired, consumed, or expended specifically for the purpose of administering tax foreclosure avoidance prior to the filing of a certificate of delinquency.

(c) When tax foreclosure avoidance costs are collected, the tax foreclosure avoidance costs must be credited to the county treasurer service fund account, except as otherwise directed.

(d) For purposes of chapter 84.64 RCW, any taxes, interest, or penalties deemed delinquent under this section remain delinquent until such time as all taxes, interest, and penalties for the tax year in which the taxes were first due and payable have been paid in full.

(7) Subsection (5) of this section notwithstanding, no interest or penalties may be assessed during any period of armed conflict on delinquent taxes imposed on the personal residences owned by active duty military personnel who are participating as part of one of the branches of the military involved in the conflict and assigned to a duty station outside the territorial boundaries of the United States.

(8) During a state of emergency declared under RCW 43.06.010(12), the county treasurer, on his or her own motion or at the request of any taxpayer affected by the emergency, may grant extensions of the due date of any taxes payable under this section as the treasurer deems proper.

(9) For purposes of this chapter, "interest" means both interest and penalties.

(10) All collections of interest on delinquent taxes must 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, must, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and must 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.

(11)(a) For purposes of this chapter, and in accordance with this section and RCW 36.29.190, the treasurer may collect taxes, assessments, fees, rates, interest, and charges by electronic bill presentment and payment. Electronic bill presentment and payment may be utilized as an option by the taxpayer, but the treasurer may not require the use of electronic bill presentment and payment. Electronic bill presentment and payment may be on a monthly or other periodic basis as the treasurer deems proper for delinquent tax year payments only or for prepayments of current tax. All prepayments must be paid in full by the due date specified in (c) of this subsection. Payments on past due taxes must include collection of the oldest delinquent year, which includes interest and taxes within

a twelve-month period, prior to filing a certificate of delinquency under chapter 84.64 RCW or distraint pursuant to RCW 84.56.070.

(b) The treasurer must provide, by electronic means or otherwise, a payment agreement that provides for payment of current year taxes, inclusive of prepayment collection charges. The treasurer may provide, by electronic means or otherwise, a payment agreement for payment of past due delinquencies, which must also require current year taxes to be paid timely. The payment agreement must be signed by the taxpayer and treasurer prior to the sending of an electronic or alternative bill, which includes a payment plan for current year taxes. The treasurer may accept partial payment of current and delinquent taxes including interest and penalties using electronic bill presentment and payments.

(c) All taxes upon real and personal property made payable by the provisions of this title are due and payable to the treasurer on or before the thirtieth day of April and are delinquent after that date. The remainder of the tax is due and payable on or before the thirty-first day of October following and is delinquent after that date. All other assessments, fees, rates, and charges are delinquent after the due date.

(d) A county treasurer may authorize payment of past due property taxes, penalties, and interest under this chapter by electronic funds transfer payments on a monthly basis. Delinquent taxes are subject to interest and penalties, as provided in subsection (5) of this section.

(e) The treasurer must pay any collection costs, investment earnings, or both on past due payments or prepayments to the credit of a county treasurer service fund account to be created and used only for the payment of expenses incurred by the treasurer, without limitation, in administering the system for collecting prepayments.

(12) For purposes of this section unless the context clearly requires otherwise, the following definitions apply:

(a) "Electronic bill presentment and payment" means statements, invoices, or bills that are created, delivered, and paid using the internet. The term includes an automatic electronic payment from a person's checking account, debit account, or credit card.

(b) "Internet" has the same meaning as provided in RCW 19.270.010.

**Sec. 2.** RCW 84.56.025 and 2003 c 12 s 1 are each amended to read as follows:

(1) The interest and penalties for delinquencies on property taxes (~~shall~~) must be waived by the county treasurer if the notice for these taxes due, as provided in RCW 84.56.050, was not sent to a taxpayer due to error by the county. Where waiver of interest and penalties has occurred, the full amount of interest and penalties (~~shall~~) must be reinstated if the taxpayer fails to pay the delinquent taxes within thirty days of receiving notice that the taxes are due. Each county treasurer (~~shall~~) must, subject to guidelines prepared by the department of revenue, establish administrative procedures to determine if taxpayers are eligible for this waiver.

(2) In addition to the waiver under subsection (1) of this section, the interest and penalties for delinquencies on property taxes (~~shall~~) must be waived by the county treasurer under the following circumstances:

(a) The taxpayer fails to make one payment under RCW 84.56.020 by the due date on the taxpayer's personal residence because of hardship caused by the

death of the taxpayer's spouse if the taxpayer notifies the county treasurer of the hardship within sixty days of the tax due date; or

(b) The taxpayer fails to make one payment under RCW 84.56.020 by the due date on the taxpayer's parent's or stepparent's personal residence because of hardship caused by the death of the taxpayer's parent or stepparent if the taxpayer notifies the county treasurer of the hardship within sixty days of the tax due date.

(3) In addition to the waivers under subsections (1) and (2) of this section, the county treasurer, at his or her discretion, may waive interest and penalties for delinquencies on property taxes where the taxpayer paid an erroneous amount due to apparent taxpayer error and the taxpayer pays the delinquent taxes within thirty days of receiving notice that the taxes are due.

(4) Before allowing a hardship waiver under subsection (2) of this section, the county treasurer may require a copy of the death certificate along with an affidavit signed by the taxpayer.

**NEW SECTION. Sec. 3.** This act applies to taxes levied for collection in 2015 and thereafter.

Passed by the House February 17, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

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## CHAPTER 14

[House Bill 2515]

### POPULATION ENUMERATION DATA—PUBLIC RECORDS EXEMPTION

AN ACT Relating to treatment of population enumeration data, including exempting from public inspection and copying; adding a new section to chapter 42.56 RCW; and adding a new section to chapter 43.41 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 42.56 RCW to read as follows:

Actual enumeration data collected under RCW 35.13.260, 35A.14.700, 36.13.030, and chapter 43.62 RCW shall be used and retained only by the office of financial management and only for the purposes of RCW 35.13.260, 35A.14.700, 36.13.030, and chapter 43.62 RCW. The enumeration data collected is confidential, is exempt from public inspection and copying under this chapter, and in accordance with section 2 of this act, must be destroyed after it is used.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.41 RCW to read as follows:

The office must destroy enumeration data collected under RCW 35.13.260, 35A.14.700, 36.13.030, and chapter 43.62 RCW after it is used to produce the required population estimates.

Passed by the House February 14, 2014.

Passed by the Senate February 26, 2014.

Approved by the Governor March 13, 2014.  
Filed in Office of Secretary of State March 14, 2014.

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## CHAPTER 15

[House Bill 2547]

### PORT DISTRICTS—LESS THAN COUNTYWIDE

AN ACT Relating to the creation of a less than countywide port district within a county containing no port districts; amending RCW 53.04.023; creating a new section; and providing an expiration date.

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

**Sec. 1.** RCW 53.04.023 and 1997 c 256 s 1 are each amended to read as follows:

A less than countywide port district with an assessed valuation of at least one hundred fifty million dollars may be created: (1) In a county that already has a less than countywide port district located within its boundaries; or (2) under the provisions of section 2 of this act. Except as provided in this section, such a port district shall be created in accordance with the procedure to create a countywide port district.

The effort to create such a port district is initiated by the filing of a petition with the county auditor calling for the creation of such a port district, describing the boundaries of the proposed port district, designating either three or five commissioner positions, describing commissioner districts if the petitioners propose that the commissioners represent districts, and providing a name for the proposed port district. The petition must be signed by voters residing within the proposed port district equal in number to at least ten percent of such voters who voted at the last county general election.

A public hearing on creation of the proposed port district shall be held by the county legislative authority if the county auditor certifies that the petition contained sufficient valid signatures. Notice of the public hearing must be published in the county's official newspaper at least ten days prior to the date of the public hearing. After taking testimony, the county legislative authority may make changes in the boundaries of the proposed port district if it finds that such changes are in the public interest and shall determine if the creation of the port district is in the public interest. No area may be added to the boundaries unless a subsequent public hearing is held on the proposed port district.

The county legislative authority shall submit a ballot proposition authorizing the creation of the proposed port district to the voters of the proposed port district, at any special election date provided in RCW ~~((29.13.020))~~ 29A.04.330, if it finds the creation of the port district to be in the public interest.

The port district shall be created if a majority of the voters voting on the ballot proposition favor the creation of the port district. The initial port commissioners shall be elected at the same election, from districts or at large, as provided in the petition initiating the creation of the port district. The election shall be otherwise conducted as provided in RCW 53.12.172, but the election of commissioners shall be null and void if the port district is not created.

NEW SECTION. **Sec. 2.** Prior to December 31, 2020, a port district comprising territory less than the entire county may be created in a county with

no port district. In the creation of such a port district, the initial port commissioners may be elected at the next general election after approval of the ballot proposition submitted to the voters authorizing the creation of a port district. In the creation of a less than countywide port district, all procedures outlined in RCW 53.04.023 must be followed, except the requirement to elect commissioners at the same election.

**NEW SECTION. Sec. 3.** Section 2 of this act expires December 31, 2020.

Passed by the House February 12, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

## CHAPTER 16

[House Bill 2446]

### PROPERTY TAX ASSESSMENTS—ADMINISTRATION—PROCEDURES FOR REFUND

AN ACT Relating to property tax assessment administration, simplifying procedures for obtaining an order for refund; and amending RCW 84.69.030.

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

**Sec. 1.** RCW 84.69.030 and 2009 c 350 s 9 are each amended to read as follows:

(1) Except as provided in this section, no orders for a refund under this chapter (~~(shall)~~) may be made except on a claim:

((4)) (a) Verified by the person who paid the tax, the person's guardian, executor or administrator; and

((2)) (b) Filed with the county treasurer within three years after the due date of the payment sought to be refunded; and

((3)) (c) Stating the statutory ground upon which the refund is claimed.

(2) No claim for an order of refund is required for a refund that is based upon:

(a) An order of the board of equalization, state board of tax appeals, or court of competent jurisdiction justifying a refund under RCW 84.69.020 (9) through (12);

(b) A decision by the treasurer or assessor that is rendered within three years after the due date of the payment to be refunded, justifying a refund under RCW 84.69.020; or

(c) A decision by the assessor or department approving an exemption application that is filed under chapter 84.36 RCW within three years after the due date of the payment to be refunded.

Passed by the House February 17, 2014.

Passed by the Senate February 26, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

## CHAPTER 17

[Substitute House Bill 2448]

## MOTOR VEHICLES—INSURANCE AND FINANCIAL RESPONSIBILITY PROGRAM

AN ACT Relating to transferring the insurance and financial responsibility program; and amending RCW 46.29.550, 46.29.560, 46.29.580, and 46.29.600.

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

**Sec. 1.** RCW 46.29.550 and 2010 c 8 s 9046 are each amended to read as follows:

Proof of financial responsibility may be evidenced by the certificate of the (~~state treasurer~~) department that the person named therein has deposited with him or her sixty thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of sixty thousand dollars. The (~~state treasurer~~) department shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

**Sec. 2.** RCW 46.29.560 and 2010 c 8 s 9047 are each amended to read as follows:

Such deposit shall be held by the (~~state treasurer~~) department to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a vehicle of a type subject to registration under the laws of this state after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. Any interest or other income accruing to such money or securities, so deposited, shall be paid (~~by the state treasurer~~) to the depositor, or his or her order, as received.

**Sec. 3.** RCW 46.29.580 and 1963 c 169 s 58 are each amended to read as follows:

The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and (~~the state treasurer shall~~) return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

**Sec. 4.** RCW 46.29.600 and 2010 c 8 s 9049 are each amended to read as follows:

(1) The department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and (~~the state treasurer shall~~) return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction, forfeiture of bail, or finding that a traffic

infraction has been committed which would require or permit the suspension or revocation of the license of the person by or for whom such proof was furnished; or

(b) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his or her license to the department.

(2) Provided, however, that the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has within one year immediately preceding such request been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he or she has been released from all of his or her liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) of this section applies for a license within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period.

Passed by the House February 12, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

## CHAPTER 18

[Substitute House Bill 2544]

NEWBORN SCREENINGS

AN ACT Relating to newborn screening; amending RCW 70.83.020; adding new sections to chapter 70.83 RCW; and providing an expiration date.

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

**Sec. 1.** RCW 70.83.020 and 2010 c 94 s 18 are each amended to read as follows:

(1) It shall be the duty of the department of health to require screening tests of all newborn infants (~~(before they are discharged from the hospital)~~ born in any setting. Each hospital or health care provider attending a birth outside of a hospital shall collect and submit a sample blood specimen for all newborns no more than forty-eight hours following birth. The department of health shall conduct screening tests of samples for the detection of phenylketonuria and other heritable or metabolic disorders leading to intellectual disabilities or physical defects as defined by the state board of health: PROVIDED, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices.

(2) The sample required in subsection (1) of this section must be received by the department within seventy-two hours of the collection of the sample, excluding any day that the Washington state public health laboratory is closed.

NEW SECTION. Sec. 2. A new section is added to chapter 70.83 RCW to read as follows:

In each instance in which the department of health notifies the infant's attending health care provider that the infant's screening test indicates a suspicion of abnormality, which may include an inadequate collection of a sample blood specimen, that requires further diagnostic evaluation, the attending health care provider shall notify the department of health of the date upon which the screening test results were disclosed by the attending health care provider to the parents or guardian of the infant.

NEW SECTION. Sec. 3. A new section is added to chapter 70.83 RCW to read as follows:

The department of health shall compile an annual report for public distribution regarding the compliance rate of hospitals at meeting the deadlines established under RCW 70.83.020 for newborn screenings. The report must include information related to the performance of each individual hospital. The annual report must also include information about the extent to which health care providers are promptly informing parents and guardians about infant screening tests that indicate a suspicion of abnormality that requires further diagnostic evaluation. The report must be made available in a format that does not disclose any identifying information related to any infant, parent, or guardian, or health care provider. The report must be posted in an accessible location on the department of health's web site.

NEW SECTION. Sec. 4. Sections 2 and 3 of this act expire January 1, 2020.

Passed by the House February 13, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

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## CHAPTER 19

[House Bill 2555]

### DESIGN-BUILD CONTRACTS—FINALIST PROPOSALS

AN ACT Relating to finalists for design-build contracts; amending RCW 39.10.330 and 39.10.470; and reenacting and amending RCW 43.131.408.

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

**Sec. 1.** RCW 39.10.330 and 2013 c 222 s 11 are each amended to read as follows:

(1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the



request for proposal documents. The request for qualifications documents shall include:

(a) A general description of the project that provides sufficient information for proposers to submit qualifications;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Evaluation factors may also include: (A) The proposer's past performance in utilization of small business entities; and (B) disadvantaged business enterprises. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; location; and cost or price-related factors that may include operating costs. The public body may also consider a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project. Alternatively, if the public body determines that all finalists will be capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(f) The form of the contract to be awarded;

(g) The honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(h) The schedule for the procurement process and the project; and

(i) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the

committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications; functional and operational elements; building performance goals and validation requirements; minimum and maximum net and gross areas of any building; and, at the discretion of the public body, preliminary engineering and architectural drawings; and

(b) The target budget for the design-build portion of the project.

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body may initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

(6) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria.

**Sec. 2.** RCW 39.10.470 and 2005 c 274 s 275 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.56 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.56 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.

(3) Proposals submitted by design-build finalists are exempt from disclosure until the notification of the highest scoring finalist is made in accordance with RCW 39.10.330(5) or the selection process is terminated.

**Sec. 3.** RCW 43.131.408 and 2013 c 222 s 22 and 2013 c 186 s 2 are each reenacted and amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2022:

(1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, & 1994 c 132 s 1;

(2) RCW 39.10.210 and 2013 c 222 s 1, 2010 1st sp.s. c 36 s 6014, 2007 c 494 s 101, & 2005 c 469 s 3;

(3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c 377 s 1;

(4) RCW 39.10.230 and 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

(5) RCW 39.10.240 and 2013 c 222 s 4 & 2007 c 494 s 104;

(6) RCW 39.10.250 and 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

(7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

(8) RCW 39.10.270 and 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

(9) RCW 39.10.280 and 2013 c 222 s 8 & 2007 c 494 s 108;

(10) RCW 39.10.290 and 2007 c 494 s 109;

(11) RCW 39.10.300 and 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

(12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c 132 s 7;

(13) RCW 39.10.330 and 2014 c ... s 1 (section 1 of this act), 2013 c 222 s 11, 2009 c 75 s 5, & 2007 c 494 s 204;

(14) RCW 39.10.340 and 2013 c 222 s 12 & 2007 c 494 s 301;

(15) RCW 39.10.350 and 2007 c 494 s 302;

(16) RCW 39.10.360 and 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;

(17) RCW 39.10.370 and 2007 c 494 s 304;

(18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;

(19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;

(20) RCW 39.10.390 and 2013 c 222 s 16 & 2007 c 494 s 306;

(21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;

(22) RCW 39.10.410 and 2007 c 494 s 308;

(23) RCW 39.10.420 and 2013 c 222 s 18, 2013 c 186 s 1, 2012 c 102 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;

(24) RCW 39.10.430 and 2007 c 494 s 402;

(25) RCW 39.10.440 and 2013 c 222 s 19 & 2007 c 494 s 403;

(26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;

(27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;

(28) RCW 39.10.470 and 2014 c ... s 2 (section 2 of this act), 2005 c 274 s 275, & 1994 c 132 s 10;

(29) RCW 39.10.480 and 1994 c 132 s 9;

(30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;

(31) RCW 39.10.900 and 1994 c 132 s 13;

(32) RCW 39.10.901 and 1994 c 132 s 14;

(33) RCW 39.10.903 and 2007 c 494 s 510;

(34) RCW 39.10.904 and 2007 c 494 s 512; and

(35) RCW 39.10.905 and 2007 c 494 s 513.

Passed by the House March 10, 2014.

Passed by the Senate February 26, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

## CHAPTER 20

[Substitute House Bill 2567]

### HOMEOWNERS' ASSOCIATIONS—MEETING MINUTES

AN ACT Relating to the approval of minutes from annual meetings of homeowners' associations; and amending RCW 64.38.035.

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

**Sec. 1.** RCW 64.38.035 and 2013 c 108 s 1 are each amended to read as follows:

(1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. The association must make available to each owner of record for examination and copying minutes from the previous association meeting not more than sixty days after the meeting. Minutes of the previous association meeting must be approved at the next association meeting in accordance with the association's governing documents.

(2) Not less than fourteen nor more than sixty days in advance of any meeting of the association, the secretary or other officers specified in the bylaws shall provide written notice to each owner of record by:

(a) Hand-delivery to the mailing address of the owner or other address designated in writing by the owner;

(b) Prepaid first-class United States mail to the mailing address of the owner or to any other mailing address designated in writing by the owner; or

(c) Electronic transmission to an address, location, or system designated in writing by the owner. Notice to owners by an electronic transmission complies with this section only with respect to those owners who have delivered to the

secretary or other officers specified in the bylaws a written record consenting to receive electronically transmitted notices. An owner who has consented to receipt of electronically transmitted notices may revoke the consent at any time by delivering a written record of the revocation to the secretary or other officer specified in the bylaws. Consent is deemed revoked if the secretary or other officer specified in the bylaws is unable to electronically transmit two consecutive notices given in accordance with the consent.

(3) The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(4) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure.

Passed by the House February 17, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

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## CHAPTER 21

[Substitute House Bill 2261]

### DEPARTMENT OF FISH AND WILDLIFE—AGENCY ACTIONS—USE OF SCIENCE

AN ACT Relating to the use of science to support significant agency actions; and amending RCW 34.05.271.

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

**Sec. 1.** RCW 34.05.271 and 2013 c 68 s 2 are each amended to read as follows:

(1)(a) Before taking a significant agency action, the department of fish and wildlife must identify the sources of information reviewed and relied upon by the agency in the course of preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of fish and wildlife shall make available on the agency's web site the index of records required under RCW 42.56.070(~~((6))~~) that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's web site, the department of fish and wildlife must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;

(ii) Internal peer review: Review by staff internal to the department of fish and wildlife;

(iii) External peer review: Review by persons that are external to and selected by the department of fish and wildlife;

(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;

(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:

(A) Federal and state statutes;

(B) Court and hearings board decisions;

(C) Federal and state administrative rules and regulations; and

(D) Policy and regulatory documents adopted by local governments;

(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;

(vii) Records of the best professional judgment of department of fish and wildlife employees or other individuals; or

(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (1)(c).

(2)(a) For the purposes of this section, "significant agency action" means an act of the department of fish and wildlife that:

(i) Results in the development of a significant legislative rule as defined in RCW 34.05.328;

(ii) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute; or

(iii) Results in the development of fish and wildlife recovery plans.

(b) "Significant agency action" does not include rule making by the department of fish and wildlife associated with fishing and hunting rules.

(3) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis.

Passed by the House February 12, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

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## CHAPTER 22

[Substitute House Bill 2262]

### DEPARTMENT OF ECOLOGY—AGENCY ACTIONS—USE OF SCIENCE

AN ACT Relating to the use of science to support significant agency actions; and amending RCW 34.05.272.

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

**Sec. 1.** RCW 34.05.272 and 2013 c 69 s 2 are each amended to read as follows:

(1) This section applies only to the water quality and shorelands and environmental assistance programs within the department of ecology.

(2)(a) Before taking a significant agency action, the department of ecology must identify the sources of information reviewed and relied upon by the agency in the course of preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of ecology shall make available on the agency's web site the index of records required under RCW 42.56.070(~~(6)~~) that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's web site, the department of ecology must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;

(ii) Internal peer review: Review by staff internal to the department of ecology;

(iii) External peer review: Review by persons that are external to and selected by the department of ecology;

(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;

(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:

(A) Federal and state statutes;

(B) Court and hearings board decisions;

(C) Federal and state administrative rules and regulations; and

(D) Policy and regulatory documents adopted by local governments;

(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;

(vii) Records of the best professional judgement of department of ecology employees or other individuals; or

(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (1)(c).

(3) For the purposes of this section, "significant agency action" means an act of the department of ecology that:

(a) Results in the development of a significant legislative rule as defined in RCW 34.05.328; or

(b) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute.

(4) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis.

Passed by the House February 12, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 13, 2014.

Filed in Office of Secretary of State March 14, 2014.

## CHAPTER 23

[Engrossed Substitute House Bill 1090]

### SHORELINE MANAGEMENT ACT—CONSTRUCTION OF DOCKS

AN ACT Relating to increasing the dollar amount for construction of a dock that does not qualify as a substantial development under the shoreline management act; and reenacting and amending RCW 90.58.030.

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

**Sec. 1.** RCW 90.58.030 and 2010 c 107 s 3 are each reenacted and amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Hearings board" means the shorelines hearings board established by this chapter;

(d) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(e) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable



regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(c) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(d) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this chapter;

(e) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(f) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

- (A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,
- (B) Birch Bay—from Point Whitehorn to Birch Point,
- (C) Hood Canal—from Tala Point to Foulweather Bluff,
- (D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and
- (E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (f)(i), (ii), (iv), and (v) of this subsection (2)((~~f~~));

(g) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(b) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(c) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department guidelines effective January 17, 2004, as now or hereafter amended;

(d) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ~~((ten))~~: (I) Twenty thousand dollars~~((, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction))~~ for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or (II) ten thousand dollars for all other docks constructed in fresh waters. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (e)(vii)(A) or (B) of this subsection (3), the subsequent construction shall be considered a substantial development for the purpose of this chapter. All dollar thresholds under (e)(vii)(B) of this subsection (3) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2018, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar thresholds, rounded to the nearest hundred dollar, and transmit them to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar thresholds are to take effect;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.

Passed by the House January 22, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

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## CHAPTER 24

[Substitute House Bill 1171]

### PRETRIAL RELEASE PROGRAM

AN ACT Relating to pretrial release programs; amending RCW 10.21.030; and adding a new section to chapter 10.21 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 10.21 RCW to read as follows:

(1) Under this chapter, "pretrial release program" is any program, either run directly by a county or city, or by a private or public entity through contract with a county or city, into whose custody an offender is released prior to trial and which agrees to supervise the offender. As used in this section, "supervision" includes, but is not limited to, work release, day monitoring, or electronic monitoring.

(2) A pretrial release program may not agree to supervise, or accept into its custody, an offender who is currently awaiting trial for a violent offense or sex offense, as defined in RCW 9.94A.030, who has been convicted of one or more violent offenses or sex offenses in the ten years before the date of the current offense, unless the offender's release before trial was secured with a payment of bail.

**Sec. 2.** RCW 10.21.030 and 2010 c 254 s 5 are each amended to read as follows:

(1) The judicial officer may at any time amend the order to impose additional or different conditions of release. The conditions imposed under this chapter supplement but do not supplant provisions of law allowing the imposition of conditions to assure the appearance of the defendant at trial or to prevent interference with the administration of justice.

(2) Appropriate conditions of release under this chapter include, but are not limited to, the following:

(a) The defendant may be placed in the custody of a ~~((designated person or organization agreeing to supervise the defendant))~~ pretrial release program;

(b) The defendant may have restrictions placed upon travel, association, or place of abode during the period of release;

(c) The defendant may be required to comply with a specified curfew;

(d) The defendant may be required to return to custody during specified hours or to be placed on electronic monitoring, if available. The defendant, if convicted, may not have the period of incarceration reduced by the number of days spent on electronic monitoring;

(e) The defendant may be prohibited from approaching or communicating in any manner with particular persons or classes of persons;

(f) The defendant may be prohibited from going to certain geographical areas or premises;

(g) The defendant may be prohibited from possessing any dangerous weapons or firearms;

(h) The defendant may be prohibited from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant. The defendant may be required to submit to testing to determine the defendant's compliance with this condition;

(i) The defendant may be prohibited from operating a motor vehicle that is not equipped with an ignition interlock device;

(j) The defendant may be required to report regularly to and remain under the supervision of an officer of the court or other person or agency; and

(k) The defendant may be prohibited from committing any violations of criminal law.

Passed by the House February 17, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 25

[House Bill 1264]

### FIRE DISTRICTS—PARTIAL FIRE DISTRICT MERGERS

AN ACT Relating to partial fire district mergers; and amending RCW 52.06.090, 52.06.100, and 52.06.140.

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

**Sec. 1.** RCW 52.06.090 and 1989 c 63 s 16 are each amended to read as follows:

A part of one district may be transferred and merged with an adjacent district if the area can be better served by the merged district. To effect such a merger, a petition, signed by a majority of the commissioners of the merging district or signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district, if signed by electors, or with the commissioners of the merger district if signed by commissioners of the merging district. If the commissioners of the

merging district approve the petition, the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district approve the petition, an election shall be called in the area to be merged.

In the event that either board of fire district commissioners does not approve the petition, the ~~((petition may be approved by the boundary review board of the county or the county legislative authority of the county in which the area to be merged is situated, and may approve the merger if it decides the area can be better served by a merger. If the part of the merging district that is proposed to merge with the merger district is located in more than one county, the approval must be by the boundary review board or county legislative authority of each county. If there is an affirmative decision, an election shall be called in the area to be merged))~~ **partial merger must not proceed.**

A majority of the votes cast is necessary to approve the transfer.

**Sec. 2.** RCW 52.06.100 and 1989 c 63 s 17 are each amended to read as follows:

If the partial merger petition has been approved by the commissioners of the merging district and the merger district and if three-fifths of the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor or lead auditor shall return the petition, together with a certificate of sufficiency, to the board of the merger district. The board of the merger district shall then adopt a resolution declaring the portion of the district merged in the same manner and to the same effect as if the same had been authorized by an election.

**Sec. 3.** RCW 52.06.140 and 1989 c 63 s 18 are each amended to read as follows:

A merger fire protection district located in a single county, that merged with a merging fire protection district located in another county or counties, shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts.

This section does not apply to partial mergers under RCW 52.06.090.

Passed by the House February 7, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 26

[Engrossed Substitute House Bill 1643]

### ENERGY INDEPENDENCE ACT—ENERGY CONSERVATION

AN ACT Relating to energy conservation under the energy independence act; and amending RCW 19.285.040.

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

**Sec. 1.** RCW 19.285.040 and 2013 c 158 s 2 are each amended to read as follows:

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in ~~((its))~~ the most recently published regional power plan as it existed on the effective date of this section or a subsequent date as may be provided by the department or the commission by rule, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. Nothing in the rule adopted under this subsection precludes a qualifying utility from using its utility specific conservation measures, values, and assumptions in identifying its achievable cost-effective conservation potential. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, beginning on January 1, 2014, cost-effective conservation achieved by a qualifying utility in excess of its biennial acquisition target may be used to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty percent of any biennial target may be met with excess conservation savings.

(ii) Beginning January 1, 2014, a qualifying utility may use single large facility conservation savings in excess of its biennial target to meet up to an additional five percent of the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined. For the purposes of this subsection (1)(c)(ii), "single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a qualifying utility whose annual electricity consumption prior to the conservation savings exceeded five average megawatts.

(iii) Beginning January 1, 2012, and until December 31, 2017, a qualifying utility with an industrial facility located in a county with a population between ninety-five thousand and one hundred fifteen thousand that is directly interconnected with electricity facilities that are capable of carrying electricity at transmission voltage, may use cost-effective conservation from that industrial facility in excess of its biennial acquisition target to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined.

(d) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in load



due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

~~((d))~~ (e) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

~~((e))~~ (f) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Except as provided in (j) of this subsection, each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

(b) A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

(d) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than coal transition power or renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

(e) The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Each renewable energy credit may be used only once to meet the requirements of this section.

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.

(g) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

(h)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(j)(i) Beginning January 1, 2016, only a qualifying utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its compliance obligation under (~~RCW 19.285.040(2))~~ this subsection.

(ii) A qualifying utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(k) An industrial facility that hosts a qualified biomass energy facility may only transfer or sell renewable energy credits associated with its facility to the qualifying utility with which it is directly interconnected with facilities owned by such a qualifying utility and that are capable of carrying electricity at transmission voltage. The qualifying utility may only use an amount of renewable energy credits associated with qualified biomass energy that are equivalent to the proportionate amount of its annual targets under (a)(ii) and (iii) of this subsection that was created by the load of the industrial facility. A qualifying utility that owns a qualified biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006.

Passed by the House February 17, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 27

[Substitute House Bill 1742]

## WINERIES—SALE OF GROWLERS

AN ACT Relating to allowing sales of growlers of wine; and amending RCW 66.24.170.

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

**Sec. 1.** RCW 66.24.170 and 2013 c 238 s 2 are each amended to read as follows:

(1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection (~~shall~~) **must** comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, (~~and~~) **may** sell wine of its own production at retail, and may sell for off-premises consumption wines of its own production in kegs or sanitary containers meeting the applicable requirements of federal law brought to the premises by the purchaser or furnished by the licensee and filled at the tap at the time of sale, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection (~~shall~~) **may** be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this

endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection include tasting or sampling privileges subject to the conditions pursuant to RCW 66.24.175. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license.

Passed by the House February 17, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 28

[House Bill 1785]

### STATE EMPLOYEES—USE OF STATE RESOURCES—BENEFITS INFORMATION

AN ACT Relating to authorizing de minimis use of state resources to provide information about programs that may be authorized payroll deductions; and amending RCW 42.52.160.

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

**Sec. 1.** RCW 42.52.160 and 1996 c 213 s 7 are each amended to read as follows:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

(3) This section does not prohibit de minimis use of state facilities to provide employees with information about (a) medical, surgical, and hospital care; (b) life insurance or accident and health disability insurance; or (c) individual retirement accounts, by any person, firm, or corporation administering such program as part of authorized payroll deductions pursuant to RCW 41.04.020.

(4) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

Passed by the House February 12, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 17, 2014.  
Filed in Office of Secretary of State March 17, 2014.

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## CHAPTER 29

[Engrossed Substitute House Bill 2680]

### LIQUOR CATERING

AN ACT Relating to liquor catering; amending RCW 66.44.350; reenacting and amending RCW 66.20.300 and 66.20.310; and adding a new section to chapter 66.24 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 66.24 RCW to read as follows:

(1) There shall be a caterer's license to sell spirits, beer, and wine, by the individual serving, at retail, for consumption on the premises at an event location that is either owned, leased, or operated either by the caterer or the sponsor of the event for which catering services are being provided. If the event is open to the public, it must be sponsored by a society or organization as defined in 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 in RCW 66.24.375 is waived. The licensee must serve food as required by rules of the board.

(2) The annual fee is 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. The annual fee for a combined beer, wine, and spirits license is one thousand dollars.

(3) The holder of this license shall notify the board or its designee of the date, time, place, and location of any catered event at which liquor will be served, sold, or consumed. The board shall create rules detailing notification requirements. Upon request, the licensee shall provide to the board all necessary or requested information concerning the individual, society, or organization that will be holding the catered function at which the caterer's liquor license will be utilized.

(4) The holder of this license may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee.

(5) The holder of this license is prohibited from catering events at locations that are already licensed to sell liquor under this chapter.

(6) The holder of this license is responsible for all sales, service, and consumption of alcohol at the location of the catered event.

**Sec. 2.** RCW 66.20.300 and 2013 c 237 s 2 and 2013 c 219 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout RCW 66.20.310 through 66.20.350 unless the context clearly requires otherwise.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older

permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by this section and RCW 66.20.310, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, section 1 of this act, 66.24.450, 66.24.570, 66.24.610, 66.24.650, and 66.24.655;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363.

(5) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

**Sec. 3.** RCW 66.20.310 and 2013 c 237 s 3 and 2013 c 219 s 3 are each reenacted and amended to read as follows:

(1)(a) There is an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There is an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise must be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued must be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder must present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit is valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by this section and RCW 66.20.300, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, section 1 of this act, 66.24.450, 66.24.570, 66.24.600, 66.24.610, 66.24.650, and 66.24.655 may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor must have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363.

**Sec. 4.** RCW 66.44.350 and 1999 c 281 s 12 are each amended to read as follows:

Notwithstanding provisions of RCW 66.44.310, employees holding beer and/or wine restaurant; beer and/or wine private club; snack bar; spirits, beer, and wine restaurant; spirits, beer, and wine private club; catering; and sports entertainment facility licenses who are licensees eighteen years of age and over may take orders for, serve, and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: PROVIDED, That such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing clean up work, setting up and arranging tables, delivering supplies, delivering messages, serving food, and seating patrons: PROVIDED FURTHER, That such employees shall remain in the areas off-limits to minors no longer than is necessary to carry out their aforementioned



duties: PROVIDED FURTHER, That such employees shall not be permitted to perform activities or functions of a bartender.

Passed by the House February 12, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

**CHAPTER 30**

[Engrossed Substitute Senate Bill 5889]

**SNOWMOBILE LICENSE FEES**

AN ACT Relating to snowmobile license fees; amending RCW 46.17.350 and 46.17.350; creating new sections; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 46.17.350 and 2013 2nd sp.s. c 23 s 19 are each amended to read as follows:

(1) Before accepting an application for a vehicle registration, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following vehicle license fee by vehicle type:

| VEHICLE TYPE                            | INITIAL FEE                           | RENEWAL FEE                           | DISTRIBUTED UNDER |
|---|---------------------------------------|---------------------------------------|-------------------|
| (a) Auto stage, six seats or less       | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (b) Camper                              | \$ 4.90                               | \$ 3.50                               | RCW 46.68.030     |
| (c) Commercial trailer                  | \$ 34.00                              | \$ 30.00                              | RCW 46.68.035     |
| (d) For hire vehicle, six seats or less | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (e) Mobile home (if registered)         | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (f) Moped                               | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (g) Motor home                          | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (h) Motorcycle                          | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (i) Off-road vehicle                    | \$ 18.00                              | \$ 18.00                              | RCW 46.68.045     |
| (j) Passenger car                       | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (k) Private use single-axle trailer     | \$ 15.00                              | \$ 15.00                              | RCW 46.68.035     |
| (l) Snowmobile                          | \$ <del>(30.00)</del><br><u>40.00</u> | \$ <del>(30.00)</del><br><u>40.00</u> | RCW 46.68.350     |
| (m) Snowmobile, vintage                 | \$ 12.00                              | \$ 12.00                              | RCW 46.68.350     |
| (n) Sport utility vehicle               | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |
| (o) Tow truck                           | \$ 30.00                              | \$ 30.00                              | RCW 46.68.030     |

|   |          |          |               |
|---|----------|----------|---------------|
| (p) Trailer, over 2000 pounds                 | \$ 30.00 | \$ 30.00 | RCW 46.68.030 |
| (q) Travel trailer                            | \$ 30.00 | \$ 30.00 | RCW 46.68.030 |
| (r) Wheeled all-terrain vehicle, on-road use  | \$12.00  | \$12.00  | RCW 46.09.540 |
| (s) Wheeled all-terrain vehicle, off-road use | \$18.00  | \$18.00  | RCW 46.09.510 |

(2) The vehicle license fee required in subsection (1) of this section is in addition to the filing fee required under RCW 46.17.005, and any other fee or tax required by law.

**Sec. 2.** RCW 46.17.350 and 2013 2nd sp.s. c 23 s 19 are each amended to read as follows:

(1) Before accepting an application for a vehicle registration, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following vehicle license fee by vehicle type:

| VEHICLE TYPE                            | INITIAL FEE                             | RENEWAL FEE                             | DISTRIBUTED UNDER |
|---|---|---|-------------------|
| (a) Auto stage, six seats or less       | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (b) Camper                              | \$ 4.90                                 | \$ 3.50                                 | RCW 46.68.030     |
| (c) Commercial trailer                  | \$ 34.00                                | \$ 30.00                                | RCW 46.68.035     |
| (d) For hire vehicle, six seats or less | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (e) Mobile home (if registered)         | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (f) Moped                               | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (g) Motor home                          | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (h) Motorcycle                          | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (i) Off-road vehicle                    | \$ 18.00                                | \$ 18.00                                | RCW 46.68.045     |
| (j) Passenger car                       | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (k) Private use single-axle trailer     | \$ 15.00                                | \$ 15.00                                | RCW 46.68.035     |
| (l) Snowmobile                          | \$ <del>((30.00))</del><br><u>50.00</u> | \$ <del>((30.00))</del><br><u>50.00</u> | RCW 46.68.350     |
| (m) Snowmobile, vintage                 | \$ 12.00                                | \$ 12.00                                | RCW 46.68.350     |
| (n) Sport utility vehicle               | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (o) Tow truck                           | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (p) Trailer, over 2000 pounds           | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |
| (q) Travel trailer                      | \$ 30.00                                | \$ 30.00                                | RCW 46.68.030     |

|   |         |         |               |
|---|---------|---------|---------------|
| (r) Wheeled all-terrain vehicle, on-road use  | \$12.00 | \$12.00 | RCW 46.09.540 |
| (s) Wheeled all-terrain vehicle, off-road use | \$18.00 | \$18.00 | RCW 46.09.510 |

(2) The vehicle license fee required in subsection (1) of this section is in addition to the filing fee required under RCW 46.17.005, and any other fee or tax required by law.

**NEW SECTION. Sec. 3.** Section 1 of this act applies to snowmobile registrations that are due on or after October 1, 2014. Section 1 of this act expires October 1, 2015.

**NEW SECTION. Sec. 4.** Section 2 of this act applies to snowmobile registrations that are due on or after October 1, 2015. Section 2 of this act takes effect October 1, 2015.

Passed by the Senate February 18, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 31

[Senate Bill 5931]

### HEALTH BENEFIT PLANS—CARRIER REQUIREMENTS

AN ACT Relating to carriers operating outside of the exchange but only relating to requiring that carriers offering health benefit plans that meet the definition of bronze level in the individual or small group market must also offer silver and gold level plans as specified in section 1302 of P.L. 111-148 of 2010 and that nongrandfathered individual and small group health plans must conform with the actuarial value tiers specified in section 1302 of P.L. 111-148 of 2010; and amending RCW 48.43.700 and 48.43.705.

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

**Sec. 1.** RCW 48.43.700 and 2012 c 87 s 6 are each amended to read as follows:

(1) ~~For plan or policy years beginning January 1, 2014, a carrier ((must offer individual or small group health benefit plans that meet the definition of silver and gold level plans in section 1302 of P.L. 111-148 of 2010, as amended, in any market outside the exchange in which it offers a plan that meets the definition of bronze level in section 1302 of P.L. 111-148 of 2010, as amended)) offering a health benefit plan that meets the definition of bronze level in section 1302 of P.L. 111-148 of 2010, as amended, in the individual market outside of the exchange must also offer plans that meet the definition of silver and gold level plans in section 1302 of P.L. 111-148 of 2010, as amended, in the individual market outside of the exchange.~~

(2) For plan or policy years beginning January 1, 2014, a carrier offering a health benefit plan that meets the definition of bronze level in section 1302 of P.L. 111-148 of 2010, as amended, in the small group market outside of the exchange must also offer plans that meet the definition of silver and gold level plans in section 1302 of P.L. 111-148 of 2010, as amended, in the small group market outside of the exchange.

(3) A health benefit plan meeting the definition of a catastrophic plan in RCW 48.43.005(8)(c)(i) may only be sold through the exchange.

~~((3))~~ (4) By December 1, 2016, the exchange board, in consultation with the commissioner, must complete a review of the impact of this section on the health and viability of the markets inside and outside the exchange and submit the recommendations to the legislature on whether to maintain the market rules or let them expire.

~~((4))~~ (5) The commissioner shall evaluate plans offered at each actuarial value defined in section 1302 of P.L. 111-148 of 2010, as amended, and determine whether variation in prescription drug benefit cost-sharing, both inside and outside the exchange in both the individual and small group markets results in adverse selection. If so, the commissioner may adopt rules to assure substantial equivalence of prescription drug cost-sharing.

**Sec. 2.** RCW 48.43.705 and 2012 c 87 s 7 are each amended to read as follows:

All nongrandfathered individual and small group health plans, other than catastrophic health plans, offered outside of the exchange must conform with the actuarial value tiers specified in section 1302 of P.L. 111-148 of 2010, as amended, as bronze, silver, gold, or platinum.

Passed by the Senate February 12, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 32

[Second Substitute Senate Bill 5973]

### COMMUNITY FOREST TRUST ACCOUNT

AN ACT Relating to the community forest trust account; amending RCW 43.30.385, 79.64.020, 79.64.040, and 79.155.090; reenacting and amending RCW 43.84.092 and 43.84.092; adding a new section to chapter 79.155 RCW; providing a contingent effective date; and providing a contingent expiration date.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 79.155 RCW to read as follows:

The community forest trust account is created in the state treasury. All moneys received for the acquisition, sale, management, and administration of the department's duties under this chapter for community forest trust lands including, but not limited to, proceeds from the sale of valuable materials from community forest trust lands, interest earned on investments in the account, and all other revenue related to community forest trust lands created or acquired pursuant to this chapter must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general fund, as well as gifts, grants, and endowments from public or private sources as may be made from time to time. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the commissioner to reimburse management costs incurred by the department on community forest trust lands, for the acquisition of interests in land or other real property to be

managed as community forest trust lands, for technical assistance grants pursuant to RCW 79.155.120, and for all other purposes consistent with this chapter. However, the board may authorize any expenditures made to: (1) Reimburse state and local governmental entities' eligible financial contributions for the acquisition of community forest trust lands under RCW 79.155.090; or (2) acquire real property for the community forest trust under RCW 79.155.040(3).

**Sec. 2.** RCW 43.30.385 and 2012 c 166 s 8 are each amended to read as follows:

(1) The park land trust revolving fund is to be utilized by the department for the 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.

~~(2) ((In addition to the other purposes identified in this section, the park land trust revolving fund may be utilized by the department to hold funding for future acquisition of lands for the community forest trust program from willing sellers under RCW 79.155.040.~~

~~(3))~~(a) 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 the park land trust revolving fund.

(b) Except as otherwise provided in this subsection, the proceeds from real property transferred or disposed under RCW 79.22.060 must be used solely to purchase replacement forest land, that must be actively managed as a working forest, within the same county as the property transferred or disposed. If the real property was transferred under RCW 79.22.060 (1)(c) and (2)(c) from within a county participating in the state forest land pool created under RCW 79.22.140, replacement forest land may be located within any county participating in the land pool.

(c) 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.

(d) The proceeds from the recreation access pass account created in RCW 79A.80.090 must be solely used for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department.

~~((4))~~ (3) 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.

~~((5))~~ (4) 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.

**Sec. 3.** RCW 79.64.020 and 2013 2nd sp.s. c 4 s 1000 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 state lands, ~~((community forest trust 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. During the 2013-2015 fiscal biennium, the legislature may transfer from the aquatics revenues in the resources management cost account to the marine resources stewardship trust account for the purposes of chapter 43.372 RCW.

**Sec. 4.** RCW 79.64.040 and 2013 2nd sp.s. c 4 s 1001 are each amended to read as follows:

(1) 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 state lands ~~((, community forest trust lands,))~~ and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) 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.

(3) Except as otherwise provided in subsection ~~((s (4) and (6)))~~ (5) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to 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.

~~((4))~~ ~~((Deductions authorized under this section for transactions pertaining to community forest trust lands must be established at a level sufficient to defray over time the management costs for activities prescribed in a parcel's management plan adopted pursuant to RCW 79.155.080, and, if deemed appropriate by the board consistent with RCW 79.155.090, to reimburse the state and any local entities' eligible financial contributions for acquisition of the parcel.~~

~~((5))~~ 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.

~~((6))~~ (5) During the 2011-2013 and 2013-2015 fiscal biennia, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board.

**Sec. 5.** RCW 79.155.090 and 2011 c 216 s 9 are each amended to read as follows:

(1) Any revenue produced on community forest trust lands must be ~~(consistent with RCW 79.64.040,)~~ allocated as follows:

(a) All costs incurred by the department in managing the parcel must be fully reimbursed; and

(b) After the department's management costs are reimbursed, any remaining revenue must then be prioritized to fulfill the management objectives for the specific parcel as identified in the postacquisition management plan developed under RCW 79.155.080 consistent with the management principles outlined in RCW 79.155.030.

(2)(a) If, by the determination of the board, there is revenue remaining in any given biennium after fulfilling the requirements of subsection (1) of this section, then the board has the discretion to reimburse any local entities' eligible financial contributions for acquisition of the parcel under RCW 79.155.070(2) and any state contribution to the acquisition of the parcel up to an amount that represents fifty percent of the difference between the parcel's original appraised fair market value and the parcel's timber and forest land value. However, any funds used as part of the local contribution may not be reimbursed if the funds were originally provided through a state or federal grant, provided through a fully compensated transfer of development rights at fair market value, or provided by a donation of funds or property.

(b) If the board decides to reimburse the state and local contribution, then it must allocate the reimbursement so that fifty percent is provided to the state general fund and fifty percent is provided to any eligible partnering local entities.

(c) Nothing in this section creates an expectation, requirement, or fiduciary duty for the board or the associated community forest trust lands to generate revenue in excess of amounts as provided in subsection (1)(a) of this section.

**Sec. 6.** RCW 43.84.092 and 2013 2nd sp.s. c 23 s 24 and 2013 2nd sp.s. c 11 s 15 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management

improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury 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) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal



criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 7.** RCW 43.84.092 and 2013 2nd sp.s. c 23 s 25 and 2013 2nd sp.s. c 11 s 16 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury 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) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the community forest trust account, the

county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement

account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 8. Section 6 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. Sec. 9. Section 7 of this act takes effect on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

Passed by the Senate February 13, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 33

[Substitute Senate Bill 6007]

### PUBLIC RECORDS EXEMPTION—PUBLIC UTILITIES—CUSTOMER INFORMATION

AN ACT Relating to clarifying the exemption in the public records act for customer information held by public utilities; and amending RCW 42.56.330.

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

**Sec. 1.** RCW 42.56.330 and 2012 c 68 s 4 are each amended to read as follows:

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The ~~((residential))~~ addresses ~~((and residential))~~, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes or other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose personally identifying information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud, or to the news media when reporting on public transportation or public safety. As used in this subsection, "personally identifying information" includes acquisition or use information pertaining to a specific, individual transit pass or fare payment media.

(a) Information regarding the acquisition or use of transit passes or fare payment media may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any

personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(8) The personally identifying information of persons who acquire and use a driver's license or identicaid that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

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## CHAPTER 34

[Senate Bill 6013]

### K-12 SCHOOLS—EPINEPHRINE AUTOINJECTORS—TECHNICAL CORRECTION

AN ACT Relating to making a technical correction to school law governing the use of epinephrine autoinjectors; and amending RCW 28A.210.383.

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

**Sec. 1.** RCW 28A.210.383 and 2013 c 268 s 2 are each amended to read as follows:

(1) School districts and nonpublic schools may maintain at a school in a designated location a supply of epinephrine autoinjectors based on the number of students enrolled in the school.

(2)(a) A licensed health professional with the authority to prescribe epinephrine autoinjectors may prescribe epinephrine autoinjectors in the name of the school district or school to be maintained for use when necessary. Epinephrine prescriptions must be accompanied by a standing order for the administration of school-supplied, undesignated epinephrine autoinjectors for potentially life-threatening allergic reactions.

(b) There are no changes to current prescription or self-administration practices for children with existing epinephrine autoinjector prescriptions or a guided anaphylaxis care plan.

(c) Epinephrine autoinjectors may be obtained from donation sources, but must be accompanied by a prescription.

(3)(a) When a student has a prescription for an epinephrine autoinjector on file, the school nurse or designated trained school personnel may utilize the school district or school supply of epinephrine autoinjectors to respond to an

anaphylactic reaction under a standing protocol according to RCW ((28A.210.300)) 28A.210.380.

(b) When a student does not have an epinephrine autoinjector or prescription for an epinephrine autoinjector on file, the school nurse may utilize the school district or school supply of epinephrine autoinjectors to respond to an anaphylactic reaction under a standing protocol according to RCW 28A.210.300.

(c) Epinephrine autoinjectors may be used on school property, including the school building, playground, and school bus, as well as during field trips or sanctioned excursions away from school property. The school nurse or designated trained school personnel may carry an appropriate supply of school-owned epinephrine autoinjectors on field trips or excursions.

(4)(a) If a student is injured or harmed due to the administration of epinephrine that a licensed health professional with prescribing authority has prescribed and a pharmacist has dispensed to a school under this section, the licensed health professional with prescribing authority and pharmacist may not be held responsible for the injury unless he or she issued the prescription with a conscious disregard for safety.

(b) In the event a school nurse or other school employee administers epinephrine in substantial compliance with a student's prescription that has been prescribed by a licensed health professional within the scope of the professional's prescriptive authority, if applicable, and written policies of the school district or private school, then the school employee, the employee's school district or school of employment, and the members of the governing board and chief administrator thereof are not liable in any criminal action or for civil damages in their individual, marital, governmental, corporate, or other capacity as a result of providing the epinephrine.

(c) School employees, except those licensed under chapter 18.79 RCW, who have not agreed in writing to the use of epinephrine autoinjectors as a specific part of their job description, may file with the school district a written letter of refusal to use epinephrine autoinjectors. This written letter of refusal may not serve as grounds for discharge, nonrenewal of an employment contract, or other action adversely affecting the employee's contract status.

(5) The office of the superintendent of public instruction shall review the anaphylaxis policy guidelines required under RCW 28A.210.380 and make a recommendation to the education committees of the legislature by December 1, 2013, based on student safety, regarding whether to designate other trained school employees to administer epinephrine autoinjectors to students without prescriptions for epinephrine autoinjectors demonstrating the symptoms of anaphylaxis when a school nurse is not in the vicinity.

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## CHAPTER 35

[Substitute Senate Bill 6069]

## SEX OFFENDERS—COMMUNITY CUSTODY CONDITIONS

AN ACT Relating to community custody conditions for sex offenders; and amending RCW 9.94A.704 and 72.09.340.

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

**Sec. 1.** RCW 9.94A.704 and 2012 1st sp.s. c 6 s 3 are each amended to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

- (a) Report as directed to a community corrections officer;
- (b) Remain within prescribed geographical boundaries;
- (c) Notify the community corrections officer of any change in the offender's address or employment;
- (d) Pay the supervision fee assessment; and
- (e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.



(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member of the victim as provided in subsection (5)(a) of this section.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- (i) The crime of conviction;
- (ii) The offender's risk of reoffending;
- (iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

**Sec. 2.** RCW 72.09.340 and 2009 c 28 s 35 are each amended to read as follows:

(1) In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(2) The department shall ~~(, no later than September 1, 1996, implement)~~ have a policy governing the department's evaluation and approval of release plans for sex offenders. The policy shall include, at a minimum, a formal process by which victims, witnesses, and other interested people may provide information and comments to the department on potential safety risks to specific individuals or classes of individuals posed by a specific sex offender. The department shall make all reasonable efforts to publicize the availability of this process through currently existing mechanisms and shall seek the assistance of courts, prosecutors, law enforcement, and victims' advocacy groups in doing so. Notice of an offender's proposed residence shall be provided to all people registered to receive notice of an offender's release under RCW 72.09.712(2), except that in no case may this notification requirement be construed to require an extension of an offender's release date.

(3)(a) For any offender convicted of a felony sex offense against a minor victim after June 6, 1996, the department shall not approve a residence location if the proposed residence: (i) Includes a minor victim or child of similar age or circumstance as a previous victim who the department determines may be put at substantial risk of harm by the offender's residence in the household; or (ii) is within close proximity of the current residence of a minor victim, unless the whereabouts of the minor victim cannot be determined or unless such a restriction would impede family reunification efforts ordered by the court or directed by the department of social and health services. The department is further authorized to reject a residence location if the proposed residence is within close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who the department determines may be put at substantial risk of harm by the sex offender's residence at that location.

(b) In addition, for any offender prohibited from living in a community protection zone under RCW 9.94A.703(1)(c), the department may not approve a residence location if the proposed residence is in a community protection zone.

(4) At the time of providing notice of a sex offender's proposed residence as provided in subsection (2) of this section, the department shall include notice that a victim or immediate family member of a victim may request that the offender refrain from contacting him or her as a condition of the offender's community custody if that condition is not already provided by court order.

(5) When the department requires supervised visitation as a term or condition of a sex offender's community placement under RCW 9.94B.050(6), the department shall, prior to approving a supervisor, consider the following:

(a) The relationships between the proposed supervisor, the offender, and the minor;

(b) The proposed supervisor's acknowledgment and understanding of the offender's prior criminal conduct, general knowledge of the dynamics of child sexual abuse, and willingness and ability to protect the minor from the potential risks posed by contact with the offender; and

(c) Recommendations made by the department of social and health services about the best interests of the child.

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## CHAPTER 36

[Senate Bill 6134]

### NONDEPOSITORY INSTITUTIONS—DEPARTMENT OF FINANCIAL INSTITUTIONS

AN ACT Relating to clarifying the statute of limitations for enforcement actions, sharing of information with federal and state regulatory authorities, and requiring call reports for nondepository institutions regulated by the department of financial institutions; amending RCW 18.44.430, 19.146.220, 31.04.045, 31.04.093, and 31.45.110; adding new sections to chapter 19.230 RCW; and adding new sections to chapter 31.45 RCW.

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

**Sec. 1.** RCW 18.44.430 and 2010 c 34 s 10 are each amended to read as follows:

(1) The director may, upon notice to the escrow agent and to the insurer providing coverage under RCW 18.44.201, deny, suspend, decline to renew, or revoke the license of any escrow agent or escrow officer if the director finds that the applicant or any partner, officer, director, controlling person, or employee has committed any of the following acts or engaged in any of the following conduct:

(a) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director.

(b) Violating any of the provisions of this chapter or any lawful rules made by the director pursuant thereto.

(c) The commission of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealings.

(d) Knowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the licensee or agent or any partner, officer, director, controlling person, or employee acts to his or her injury or damage.

(e) Conversion of any money, contract, deed, note, mortgage, or abstract 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, abstract, or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion.

(f) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of, the director or his or her authorized representatives.

(g) Committing any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter.

(h) Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal.

(i) Committing acts or engaging in conduct that demonstrates the applicant or licensee to be incompetent or untrustworthy, or a source of injury and loss to the public.

(2) Any conduct of an applicant or licensee that constitutes grounds for enforcement action under this chapter is sufficient regardless of whether the conduct took place within or outside of the state of Washington.

(3) In addition to or in lieu of a license suspension, revocation, or denial, the director may assess a fine of up to one hundred dollars per day for each violation of this chapter or rules adopted under this chapter and may remove and/or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(4) In addition to or in lieu of (a) a license suspension, revocation, or denial, or (b) fines payable to the department, the director may order an escrow agent, officer, controlling person, director, employee, or licensed escrow officer violating this chapter to make restitution to an injured consumer.

**Sec. 2.** RCW 19.146.220 and 2013 c 30 s 5 are each amended to read as follows:

(1) The director may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators, grant or deny licenses to mortgage brokers and loan originators, and hold hearings.

(2) The director may impose fines or order restitution against licensees or other persons subject to this chapter, or deny, suspend, decline to renew, or revoke licenses for:

(a) Violations of orders, including cease and desist orders;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Failure to pay a fee required by the director or maintain the required bond;

(d) Failure to comply with any directive, order, or subpoena of the director;

or  
(e) Any violation of this chapter.

(3) The director may impose fines on an employee, loan originator, independent contractor, or agent of the licensee, or other person subject to this chapter for:

(a) Any violations of this chapter; or

(b) Failure to comply with any directive or order of the director.

(4) The director may issue orders directing a licensee, its employee, loan originator, independent contractor, agent, or other person subject to this chapter to cease and desist from conducting business.

(5) The director may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(a) Any violation of this chapter;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(d) Failure to comply with any directive or order of the director.

(6) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(7) The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(8) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

~~((8))~~ (9) The director 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 director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

NEW SECTION. Sec. 3. A new section is added to chapter 19.230 RCW to read as follows:

The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

NEW SECTION. Sec. 4. A new section is added to chapter 19.230 RCW to read as follows:

Each licensee on a nationwide licensing system shall submit reports of condition which must be in the form and must contain the information as the director may require.

**Sec. 5.** RCW 31.04.045 and 2010 c 35 s 3 are each amended to read as follows:

(1) Application for a license under this chapter must be made to the nationwide mortgage licensing system and registry or in the form prescribed by the director. The application must contain at least the following information:

(a) The name and the business addresses of the applicant;

(b) If the applicant is a partnership or association, the name of every member;

(c) If the applicant is a corporation, the name, residence address, and telephone number of each officer and director;

(d) The street address, county, and municipality from which business is to be conducted; and

(e) Such other information as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, ~~((the nationwide mortgage licensing system and registry,))~~ or any governmental agency or entity authorized to receive this information for a state

and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

~~(3) ((In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.~~

~~(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.~~

~~(5))~~ At the time of filing an application for a license under this chapter, each applicant shall pay to the director ~~((or through the nationwide mortgage licensing system and registry))~~ an investigation fee and the license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

~~((6))~~ (4) Each applicant shall file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed in the aggregate the penal sum of the bond. The penal sum of the bond shall be a minimum of thirty thousand dollars and based on the annual dollar amount of loans originated or residential mortgage loans serviced. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section.

**Sec. 6.** RCW 31.04.093 and 2013 c 29 s 5 are each amended to read as follows:

(1) The director shall enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director, including but not limited to cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct lending or residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing, by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3) The director may suspend or revoke a license issued under this chapter if the director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license. The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the director finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the director may revoke or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any order or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or loan originator, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter; or

(c) Make a refund or restitution to a borrower or other person who is damaged as a result of a violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending or residential mortgage loan servicing, or perform a settlement service related to lending or residential mortgage loan servicing, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter;

(e) A violation of RCW 31.04.027, 31.04.102, 31.04.155, or 31.04.221; or

(f) Failure to obtain a license for activity that requires a license.

(7) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. If any person subject to this chapter makes a payment to the department under this section, the person may not advertise such payment.

(8) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing shall be held within fourteen days of receipt of a request for a hearing unless otherwise specified in chapter 34.05 RCW.

(9) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other authority under this chapter. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(10) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(11) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter.

(12) A license issued under this chapter expires upon the licensee's failure to comply with the annual assessment requirements in RCW 31.04.085, and the rules. The department must provide notice of the expiration to the address of



record provided by the licensee. On the 15th day after the department provides notice, if the assessment remains unpaid, the license expires. The licensee must receive notice prior to expiration and have the opportunity to stop the expiration as set forth in rule.

**Sec. 7.** RCW 31.45.110 and 2012 c 17 s 11 are each amended to read as follows:

(1) The director may issue and serve upon a licensee or applicant, or any director, officer, sole proprietor, partner, or controlling person of a licensee or applicant, a statement of charges if, in the opinion of the director, any licensee or applicant, or any director, officer, sole proprietor, partner, or controlling person of a licensee or applicant:

(a) Is engaging or has engaged in an unsafe or unsound financial practice in conducting a business governed by this chapter;

(b) Is violating or has violated this chapter, including violations of:

(i) Any rules, orders, or subpoenas issued by the director under any act;

(ii) Any condition imposed in writing by the director in connection with the granting of any application or other request by the licensee; or

(iii) Any written agreement made with the director;

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause;

(d) Obtains a license by means of fraud, misrepresentation, concealment, or through mistake or inadvertence of the director;

(e) Provides false statements or omits material information on an application;

(f) Knowingly or negligently omits material information during or in response to an examination or in connection with an investigation by the director;

(g) Fails to pay a fee or assessment required by the director or any multistate licensing system prescribed by the director, or fails to maintain the required bond or deposit;

(h) Commits a crime against the laws of any jurisdiction involving moral turpitude, financial misconduct, or dishonest dealings. For the purposes of this section, a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction is conclusive evidence in any hearing under this chapter;

(i) Knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying upon the word, representation, or conduct acts to his or her injury or damage;

(j) Converts any money or its equivalent to his or her own use or to the use of his or her principal or of any other person;

(k) Fails to disclose any information within his or her knowledge or fails to produce any document, book, or record in his or her possession for inspection by the director upon demand;

(l) Commits any act of fraudulent or dishonest dealing. For the purposes of this section, a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction is conclusive evidence in any hearing under this chapter;

(m) Commits an act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury and loss to the public;

(n) Violates any applicable state or federal law relating to the activities governed by this chapter.

(2) The statement of charges must be issued under chapter 34.05 RCW. The director or the director's designee may impose the following sanctions against any licensee or applicant, or any directors, officers, sole proprietors, partners, controlling persons, or employees of a licensee or applicant:

(a) Deny, revoke, suspend, or condition a license or small loan endorsement;

(b) Order the licensee or person to cease and desist from practices that violate this chapter or constitute unsafe and unsound financial practices;

(c) Impose a fine not to exceed one hundred dollars per day for each day's violation of this chapter;

(d) Order restitution or refunds to borrowers or other parties for violations of this chapter or take other affirmative action as necessary to comply with this chapter; and

(e) Remove from office or ban from participation in the affairs of any licensee any director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

(3) The proceedings to impose the sanctions described in subsection (2) of this section, including any hearing or appeal of the statement of charges, are governed by chapter 34.05 RCW. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(4) Unless the licensee or person personally appears at the hearing or is represented by a duly authorized representative, the licensee is deemed to have consented to the statement of charges and the sanctions imposed in the statement of charges.

(5) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150.

**NEW SECTION. Sec. 8.** A new section is added to chapter 31.45 RCW to read as follows:

(1) The requirements under any federal law or laws of another state regarding the privacy or confidentiality of any information or material provided to the department, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the department. If consistent with applicable law, the information and material may be shared with all state and federal regulatory officials without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) When the department is a party to a memoranda of understanding or enforcement order issued by the consumer financial protection bureau, the privacy, confidentiality, or privilege accorded to the document by federal law continues to apply even after the memoranda or order has been signed by the director or a designee.

(3) Any requirement under chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) or (2) of this section that is inconsistent with subsection (1) or (2) of this section is superseded by the requirements of this section.

**NEW SECTION. Sec. 9.** A new section is added to chapter 31.45 RCW to read as follows:

Each licensee on a nationwide licensing system shall submit reports of condition which must be in the form and must contain the information as the director may require.

Passed by the Senate February 12, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 37

[Senate Bill 6135]

### BANKS AND TRUST COMPANIES

AN ACT Relating to the modernization, clarification, reorganization, and amendment of the laws respecting the charter and regulation of Washington state nondepository trust companies, fiduciary activities and trust business of state commercial banks, alien banks, state savings banks, and state savings associations, and fiduciary activities and trust business of other trust institutions and persons engaging in trust business in this state; amending RCW 30.04.010, 30.04.020, 30.04.025, 30.04.030, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.120, 30.04.127, 30.04.129, 30.04.140, 30.04.212, 30.04.214, 30.04.215, 30.04.220, 30.04.225, 30.04.230, 30.04.232, 30.04.240, 30.04.260, 30.04.285, 30.04.330, 30.04.375, 30.04.380, 30.04.390, 30.04.400, 30.04.405, 30.04.410, 30.04.450, 30.04.455, 30.04.460, 30.04.465, 30.04.470, 30.04.475, 30.04.500, 30.04.505, 30.04.510, 30.04.515, 30.04.555, 30.04.560, 30.04.570, 30.08.020, 30.08.025, 30.08.030, 30.08.055, 30.08.060, 30.08.070, 30.08.080, 30.08.081, 30.08.084, 30.08.086, 30.08.087, 30.08.140, 30.08.140, 30.08.150, 30.08.180, 30.12.020, 30.12.025, 30.12.030, 30.12.040, 30.12.0401, 30.12.042, 30.12.044, 30.12.047, 30.12.060, 30.12.070, 30.12.090, 30.12.100, 30.12.110, 30.12.180, 30.12.190, 30.12.205, 30.12.220, 30.12.240, 30.16.010, 30.20.005, 30.20.025, 30.20.060, 30.20.090, 30.22.041, 30.22.120, 30.22.130, 30.22.190, 30.22.220, 30.32.010, 30.32.020, 30.32.030, 30.32.040, 30.36.010, 30.36.020, 30.36.030, 30.36.040, 30.38.010, 30.38.030, 30.38.070, 30.42.020, 30.42.060, 30.42.070, 30.42.090, 30.42.105, 30.42.115, 30.42.120, 30.42.130, 30.42.155, 30.42.280, 30.42.310, 30.42.340, 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.100, 30.44.110, 30.44.120, 30.44.150, 30.44.160, 30.44.170, 30.44.180, 30.44.190, 30.44.200, 30.44.210, 30.44.220, 30.44.230, 30.44.240, 30.44.250, 30.44.270, 30.44.280, 30.46.010, 30.46.020, 30.46.030, 30.46.040, 30.46.050, 30.46.060, 30.46.070, 30.46.080, 30.46.090, 30.49.020, 30.49.070, 30.49.125, 30.56.050, 30.56.060, 32.08.210, and 33.12.010; amending 2013 c 76 s 33 (uncodified); reenacting and amending RCW 30.04.125, 30.04.130, 30.04.180, 30.04.210, 30.08.010, 30.08.082, 30.08.090, 30.08.092, 30.08.190, 30.12.010, and 30.22.040; adding a new section to chapter 32.04 RCW; adding a new section to chapter 33.04 RCW; adding new titles to the Revised Code of Washington to be codified as Title 30A and 30B RCW; creating new sections; recodifying RCW 30.04.010, 30.04.020, 30.04.025, 30.04.030, 30.04.040, 30.04.045, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.112, 30.04.120, 30.04.125, 30.04.127, 30.04.129, 30.04.130, 30.04.140, 30.04.180, 30.04.210, 30.04.212, 30.04.214, 30.04.215, 30.04.217, 30.04.220, 30.04.225, 30.04.230, 30.04.232, 30.04.238, 30.04.240, 30.04.260, 30.04.280, 30.04.285, 30.04.295, 30.04.300, 30.04.330, 30.04.375, 30.04.380, 30.04.390, 30.04.395, 30.04.400, 30.04.405, 30.04.410, 30.04.450, 30.04.455, 30.04.460, 30.04.465, 30.04.470, 30.04.475, 30.04.500, 30.04.505, 30.04.510, 30.04.515, 30.04.550, 30.04.555, 30.04.560, 30.04.565, 30.04.570, 30.04.575, 30.04.600, 30.04.605, 30.04.610, 30.04.650, 30.04.901, 30.08.010, 30.08.020, 30.08.025, 30.08.030, 30.08.040, 30.08.050, 30.08.055, 30.08.060, 30.08.070, 30.08.080, 30.08.081, 30.08.082, 30.08.083, 30.08.084, 30.08.086, 30.08.087, 30.08.088, 30.08.090, 30.08.092, 30.08.140, 30.08.150, 30.08.160, 30.08.170, 30.08.180, 30.08.190, 30.12.010, 30.12.020, 30.12.025, 30.12.030, 30.12.040, 30.12.0401, 30.12.042, 30.12.044, 30.12.045, 30.12.046, 30.12.047, 30.12.060, 30.12.070, 30.12.090, 30.12.100, 30.12.110, 30.12.115, 30.12.120, 30.12.130, 30.12.180, 30.12.190, 30.12.205,

30.12.220, 30.12.230, 30.12.240, 30.16.010, 30.20.005, 30.20.025, 30.20.060, 30.20.090, 30.22.010, 30.22.020, 30.22.030, 30.22.040, 30.22.041, 30.22.050, 30.22.060, 30.22.070, 30.22.080, 30.22.090, 30.22.100, 30.22.110, 30.22.120, 30.22.130, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, 30.22.210, 30.22.220, 30.22.230, 30.22.240, 30.22.245, 30.22.250, 30.22.260, 30.22.900, 30.22.901, 30.22.902, 30.24.080, 30.32.010, 30.32.020, 30.32.030, 30.32.040, 30.36.010, 30.36.020, 30.36.030, 30.36.040, 30.36.050, 30.38.005, 30.38.010, 30.38.015, 30.38.020, 30.38.030, 30.38.040, 30.38.050, 30.38.060, 30.38.070, 30.38.080, 30.38.900, 30.42.010, 30.42.020, 30.42.030, 30.42.040, 30.42.050, 30.42.060, 30.42.070, 30.42.080, 30.42.090, 30.42.100, 30.42.105, 30.42.115, 30.42.120, 30.42.130, 30.42.140, 30.42.145, 30.42.150, 30.42.155, 30.42.160, 30.42.170, 30.42.180, 30.42.190, 30.42.200, 30.42.210, 30.42.220, 30.42.230, 30.42.240, 30.42.250, 30.42.260, 30.42.270, 30.42.280, 30.42.290, 30.42.300, 30.42.310, 30.42.320, 30.42.330, 30.42.340, 30.42.900, 30.43.005, 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.060, 30.44.070, 30.44.080, 30.44.090, 30.44.100, 30.44.110, 30.44.120, 30.44.130, 30.44.140, 30.44.150, 30.44.160, 30.44.170, 30.44.180, 30.44.190, 30.44.200, 30.44.210, 30.44.220, 30.44.230, 30.44.240, 30.44.250, 30.44.260, 30.44.270, 30.44.280, 30.46.010, 30.46.020, 30.46.030, 30.46.040, 30.46.050, 30.46.060, 30.46.070, 30.46.080, 30.46.090, 30.46.100, 30.49.010, 30.49.020, 30.49.030, 30.49.040, 30.49.050, 30.49.060, 30.49.070, 30.49.080, 30.49.090, 30.49.100, 30.49.110, 30.49.120, 30.49.125, 30.49.130, 30.56.010, 30.56.020, 30.56.030, 30.56.040, 30.56.050, 30.56.060, 30.56.070, 30.56.080, 30.56.090, 30.56.100, 30.60.010, 30.60.020, 30.60.030, 30.60.900, 30.60.901, 30.98.010, 30.98.020, 30.98.030, 30.98.040, 30.98.050, and 30.98.060; repealing RCW 30.08.155, 30.53.010, 30.53.020, 30.53.030, 30.53.040, 30.53.050, 30.53.060, 30.53.070, and 30.53.080; prescribing penalties; providing an effective date; providing a contingent effective date; and providing a contingent expiration date.

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

**NEW SECTION. Sec. 1. FINDINGS AND PURPOSE.** The legislature declares that:

(1) Banking institutions and trust companies provide essential and valuable fiduciary management services to consumers, businesses, and nonprofit organizations in the state of Washington;

(2) There is a critical public need to encourage and promote the revitalization and growth of the state's financial sector and realize its potential as an alternative global financial services hub;

(3) The fulfillment of this potential can best be achieved by taking measures to:

(a) Clarify prudential standards of professional fiduciary management to provide assurances to state, national, and international owners and managers of wealth;

(b) Promote flexibility in the management of asset portfolios to respond to ever changing global conditions; and

(c) Provide certainty and clear expectations for owners of wealth, asset managers, and their respective advisors;

(4) Banking institutions and nondepository trust companies in the state of Washington will be better prepared to continue providing professional fiduciary management services effectively if laws of the state's banking institutions and nondepository trust companies are modernized, clarified, reorganized and, with respect to some situations, amended;

(5) There is a need for improved services and reduced costs for trust institution clients and customers and other consumers in this state through modernization of state law to clarify and thereby promote the delegation by trust institutions of fiduciary functions to qualified third-party professionals, to authorize clients to designate any trust institution to act for them, and to protect the public from excessive fees or undisclosed conflicts of interest of trust institutions and their affiliates;

(6) Properly capitalized and professionally managed trusts and trust companies serving only family members and their affiliated entities, which operate privately and do not hold themselves out to, nor provide services to, the general public, should continue to operate without the necessity of being chartered or regulated by the department of financial institutions;

(7) The authority of the department of financial institutions needs to be clarified, preserved, and assured as the primary instrument of assuring the safety and soundness of banking institutions and nondepository trust companies acting as fiduciaries and engaging in trust business in this state;

(8) Nondepository trust companies should continue to act as fiduciaries and otherwise engage in trust business in this state, so long as they are properly capitalized, competently managed by persons of integrity, and supervised by the department of financial institutions so as to ensure that such trust companies are operated in compliance with law, in a safe and sound manner, and in a manner which protects trust settlors, trust beneficiaries, and the general public in this state; and

(9) The creation of a comprehensive trust institutions act serves the convenience and advantage of Washington state trust settlors and trust beneficiaries, and the state's general public, and preserves and maintains the fairness of competition and parity between Washington state-chartered banking institutions and trust companies, and federally chartered and out-of-state state-chartered banking institutions and trust companies.

**NEW SECTION. Sec. 2.** NEW TITLE. Sections 101 through 261 of this act constitute a new title in the Revised Code of Washington to be codified as Title 30A RCW.

**NEW SECTION. Sec. 3.** NEW TITLE. Sections 301 through 406 of this act constitute a new title in the Revised Code of Washington to be codified as Title 30B RCW.

**NEW SECTION. Sec. 4.** RECODIFICATION. RCW 30.04.010, 30.04.020, 30.04.025, 30.04.030, 30.04.045, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.112, 30.04.120, 30.04.125, 30.04.127, 30.04.129, 30.04.130, 30.04.140, 30.04.180, 30.04.210, 30.04.212, 30.04.214, 30.04.215, 30.04.217, 30.04.220, 30.04.225, 30.04.230, 30.04.232, 30.04.238, 30.04.240, 30.04.260, 30.04.280, 30.04.285, 30.04.295, 30.04.300, 30.04.330, 30.04.375, 30.04.380, 30.04.390, 30.04.395, 30.04.400, 30.04.405, 30.04.410, 30.04.450, 30.04.455, 30.04.460, 30.04.465, 30.04.470, 30.04.475, 30.04.500, 30.04.505, 30.04.510, 30.04.515, 30.04.550, 30.04.555, 30.04.560, 30.04.565, 30.04.570, 30.04.575, 30.04.600, 30.04.605, 30.04.610, 30.04.650, 30.04.901, 30.08.010, 30.08.020, 30.08.025, 30.08.030, 30.08.040, 30.08.050, 30.08.055, 30.08.060, 30.08.070, 30.08.080, 30.08.081, 30.08.082, 30.08.083, 30.08.084, 30.08.086, 30.08.087, 30.08.088, 30.08.090, 30.08.092, 30.08.140, 30.08.150, 30.08.160, 30.08.170, 30.08.180, 30.08.190, 30.12.010, 30.12.020, 30.12.025, 30.12.030, 30.12.040, 30.12.0401, 30.12.042, 30.12.044, 30.12.045, 30.12.046, 30.12.047, 30.12.060, 30.12.070, 30.12.090, 30.12.100, 30.12.110, 30.12.115, 30.12.120, 30.12.130, 30.12.180, 30.12.190, 30.12.205, 30.12.220, 30.12.230, 30.12.240, 30.16.010, 30.20.005, 30.20.025, 30.20.060, 30.20.090, 30.22.010, 30.22.020, 30.22.030, 30.22.040, 30.22.041, 30.22.050, 30.22.060, 30.22.070, 30.22.080, 30.22.090, 30.22.100, 30.22.110, 30.22.120, 30.22.130, 30.22.140, 30.22.150,

30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, 30.22.210, 30.22.220, 30.22.230, 30.22.240, 30.22.245, 30.22.250, 30.22.260, 30.22.900, 30.22.901, 30.22.902, 30.24.080, 30.32.010, 30.32.020, 30.32.030, 30.32.040, 30.36.010, 30.36.020, 30.36.030, 30.36.040, 30.36.050, 30.38.005, 30.38.010, 30.38.015, 30.38.020, 30.38.030, 30.38.040, 30.38.050, 30.38.060, 30.38.070, 30.38.080, 30.38.900, 30.42.010, 30.42.020, 30.42.030, 30.42.040, 30.42.050, 30.42.060, 30.42.070, 30.42.080, 30.42.090, 30.42.100, 30.42.105, 30.42.115, 30.42.120, 30.42.130, 30.42.140, 30.42.145, 30.42.150, 30.42.155, 30.42.160, 30.42.170, 30.42.180, 30.42.190, 30.42.200, 30.42.210, 30.42.220, 30.42.230, 30.42.240, 30.42.250, 30.42.260, 30.42.270, 30.42.280, 30.42.290, 30.42.300, 30.42.310, 30.42.320, 30.42.330, 30.42.340, 30.42.900, 30.43.005, 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.060, 30.44.070, 30.44.080, 30.44.090, 30.44.100, 30.44.110, 30.44.120, 30.44.130, 30.44.140, 30.44.150, 30.44.160, 30.44.170, 30.44.180, 30.44.190, 30.44.200, 30.44.210, 30.44.220, 30.44.230, 30.44.240, 30.44.250, 30.44.260, 30.44.270, 30.44.280, 30.46.010, 30.46.020, 30.46.030, 30.46.040, 30.46.050, 30.46.060, 30.46.070, 30.46.080, 30.46.090, 30.46.100, 30.49.010, 30.49.020, 30.49.030, 30.49.040, 30.49.050, 30.49.060, 30.49.070, 30.49.080, 30.49.090, 30.49.100, 30.49.110, 30.49.120, 30.49.125, 30.49.130, 30.56.010, 30.56.020, 30.56.030, 30.56.040, 30.56.050, 30.56.060, 30.56.070, 30.56.080, 30.56.090, 30.56.100, 30.60.010, 30.60.020, 30.60.030, 30.60.900, 30.60.901, 30.98.010, 30.98.020, 30.98.030, 30.98.040, 30.98.050, and 30.98.060 are each recodified as sections in Title 30A RCW (the new title created under section 2 of this act).

**NEW SECTION. Sec. 5.** EFFECTIVE DATE. This act takes effect January 5, 2015. The director of financial institutions may immediately take such steps as are necessary to ensure that this act is implemented on its effective date.

**NEW SECTION. Sec. 101.** This title may be known and cited as the Washington commercial bank act.

**Sec. 102.** RCW 30.04.010 and 2013 c 76 s 1 are each amended to read as follows:

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

(1) "Adequately capitalized," "critically undercapitalized," "significantly undercapitalized," "undercapitalized," and "well-capitalized," respectively, have meanings consistent with the definitions these same terms have under the prompt corrective action provisions of the federal deposit insurance act, 12 U.S.C. Sec. 1831o, and applicable enabling rules of the federal deposit insurance corporation.

(2) "Bank," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company, savings association, or a mutual savings bank.

(3) "Bank holding company" means a bank holding company under authority of the federal bank holding company act.

(4) "Banking" includes the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.

(5) "Branch" means any established office of deposit, domestic or otherwise, maintained by any bank (~~or trust company~~) other than its head

office. "Branch" does not mean a machine permitting customers to leave funds in storage or communicate with bank employees who are not located at the site of the machine, unless employees of the bank at the site of the machine take deposits on a regular basis. An office or facility of an entity other than the bank shall not be deemed to be established by the bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the bank.

(6) "Corporation," in reference to a bank authorized under this title, means either a corporation operating as a bank authorized under this title or a limited liability company operating as a bank under this title pursuant to the requirements of RCW 30.08.025 (as recodified by this act).

(7) "Department" means the Washington state department of financial institutions.

~~((7))~~ (8) "Director" means the director of the department.

~~((8))~~ (9) "Financial holding company" means a financial services holding company under authority of the federal bank holding company act.

~~((9))~~ (10) "Foreign bank" and "foreign banker" includes:

(a) Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank;

(b) Every unincorporated company, partnership or association of two or more individuals organized under the laws of another state or country, doing a banking business;

(c) Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein or entitled to more than one-half of the net assets thereof are not residents of this state; or

(d) Every nonresident of this state doing a banking business in his or her own name and right only.

~~((10))~~ (11) "Holding company" means a bank holding company or financial holding company of a bank organized under chapter 30.08 RCW (as recodified by this act) or converted to a state bank under chapter 30.49 RCW (as recodified by this act) or a holding company of a trust company authorized to do business under this title) (as recodified by this act).

~~((11))~~ (12) "Law firm" means a partnership, professional limited liability corporation, professional limited liability partnership, or similar entity whose partners, members, or shareholders are exclusively attorneys-at-law.

~~((12))~~ (13) "Person" means an individual or an entity including, but not limited to, a sole proprietorship, firm, association, general partnership or joint venture, limited liability company, limited liability partnership, trust, or corporation, or the plural thereof, whether resident, nonresident, citizen, or not.

~~((13))~~ (14) The term "trust business," in relation to a bank, shall include the business of doing any or all of the things specified in ((RCW 30.08.150 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11))) section 329(1) (b) through (k) of this act, together with any other activity authorized for a state trust company by the director pursuant to section 329(1)(q) of this act that the director designates as trust business.

~~((14))~~ (15) "Trust company," unless a different meaning appears from the context, means any corporation or limited liability company, other than a bank, savings bank, or savings association, organized and chartered as a trust company

under ~~((this title))~~ Title 30B RCW (the new title created under section 3 of this act) for the purpose of engaging in trust business.

**Sec. 103.** RCW 30.04.020 and 2010 c 88 s 4 are each amended to read as follows:

(1) The name of every bank shall contain the word "bank" and the name of every trust company shall contain the word "trust," or the word "bank." Except as provided in RCW 33.08.030 or as otherwise authorized by this section or approved by the director, only a national bank, federal savings bank, a bank or trust company ~~((authorized by this title))~~, savings bank under Title 32 RCW, bank holding company or financial holding company, a holding company authorized by this title or Title 32 RCW, or a foreign or alien corporation or other legal person authorized by this title to do so, shall:

(a) Use as a part of his ~~((for her))~~ or her or its name or other business designation, as a prominent syllable within a word comprising all or a portion of its name or other business designation, or in any manner as if connected with his ~~((for her))~~ or her or its business or place of business any of the following words or the plural thereof, to wit: "bank," "banking," "banker," "bancorporation," "bancorp," or "trust," or any foreign language designations thereof, including, by way of example, "banco" or "banque."

(b) Use any sign, logo, or marketing message, in any media, or use any letterhead, billhead, note, receipt, certificate, blank, form, or any written, printed, electronic or internet-based instrument or material representation whatsoever, directly or indirectly indicating that the business of such person is that of a bank or trust company.

(2) A foreign corporation or other foreign domiciled legal person, whose name contains the words "bank," "banker," "banking," "bancorporation," "bancorp," or "trust," or the foreign language equivalent thereof, or whose articles of incorporation empower it to engage in banking or to engage in a trust business, may not engage in banking or in a trust business in this state unless the corporation or other legal person (a) is expressly authorized to do so under this title, under federal law, or by the director, and (b) complies with all applicable requirements of Washington state law regarding foreign corporations and other foreign legal persons. If an activity would not constitute "transacting business" within the meaning of RCW 23B.15.010(1) or chapter 23B.18 RCW, then the activity shall not constitute banking or engaging in a trust business. Nothing in this subsection shall prevent operations by an alien bank in compliance with chapter 30.42 RCW (as recodified by this act).

(3) This section shall not prevent a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act from using the words "mortgage banker" or "mortgage banking" in the conduct of its business, but only if both words are used together in either of the forms which appear in quotations in this sentence.

(4) Any individual or legal person, or director, officer~~((-))~~, or manager of such legal person, who knowingly violates any provision of this section shall be guilty of a gross misdemeanor.

**Sec. 104.** RCW 30.04.025 and 2003 c 24 s 3 are each amended to read as follows:



Notwithstanding any restrictions, limitations, requirements, or other provisions of law, a financial institution, as defined in RCW 30.22.040~~((+2))~~ (8) (as recodified by this act), may charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, at a rate or amount that is equal to, or less than, the maximum rate or amount of interest, discount or other points, finance charges, or other similar charges that national banks located in any other state or states may charge, take, receive, or reserve, under 12 U.S.C. Sec. 85, on loans or other extensions of credit to residents of this state. However, this section does not authorize any subsidiary of a bank, of a ~~((trust company, of a mutual))~~ savings bank, of a savings and loan association, or of a credit union to charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, unless the subsidiary is itself a bank, ~~((trust company, mutual))~~ savings bank, savings and loan association, or credit union.

**Sec. 105.** RCW 30.04.030 and 2010 c 88 s 5 are each amended to read as follows:

(1) The director shall have power to adopt uniform rules in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of banks, trust companies, and holding companies and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. ~~((The director shall mail a copy of the rules to each bank and trust company at its principal place of business.))~~

(2) The director shall have the power, and broad administrative discretion, to administer and interpret the provisions of this title to facilitate the delivery of financial services to the citizens of the state of Washington by the banks, trust companies~~((+))~~, and holding companies subject to this title.

**Sec. 106.** RCW 30.04.050 and 2010 c 88 s 6 are each amended to read as follows:

(1) Each bank ~~((and trust company,))~~ and ~~((their))~~ its directors, officers, employees, and agents, shall comply with:

(a) This title ~~((and chapter 11.100 RCW))~~ and Title 30B RCW (the new title created under section 3 of this act) as applicable to each of them;

(b) The rules adopted by the department with respect to banks and trust companies;

(c) Any lawful direction or order of the director;

(d) Any lawful supervisory agreement with the director; and

(e) The applicable statutes, rules~~((+))~~, and regulations administered by the board of governors of the federal reserve system, the federal deposit insurance corporation, or their successor agencies, with respect to banks or trust companies.

(2) Each holding company, and its directors, officers, employees, and agents, shall comply with:

(a) The provisions of this title that are applicable to each of them;

(b) The rules adopted by the department with respect to holding companies;

(c) Any lawful direction or order of the director;

(d) Any lawful supervisory agreement with the director; and

(e) The applicable statutes, rules, and regulations administered by the board of governors of the federal reserve system, or its successor agency, with respect to holding companies, the violation of which would result in an unsafe and unsound practice or material violation of law with respect to the subsidiary bank (~~(or trust company)~~) of the holding company.

(3) The violation of any supervisory agreement, direction, order, statute, rule(~~(f)~~), or regulation referenced in this section, in addition to any other penalty provided in this title, shall, at the option of the director, subject the offender to a penalty of up to ten thousand dollars for each offense, payable upon issuance of any order or directive of the director, which may be recovered by the attorney general in a civil action in the name of the department.

**Sec. 107.** RCW 30.04.060 and 2010 c 88 s 7 are each amended to read as follows:

(1) The director, assistant director, program manager, or an examiner shall visit each bank (~~(and each trust company)~~) at least once every eighteen months, and oftener if necessary, or as otherwise required by the rules and interpretations of applicable federal banking examination authorities, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation.

(2) The director may make such other full or partial examinations as deemed necessary and may examine any bank holding company that owns any portion of a bank (~~(or trust company)~~) chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank (~~(or trust company)~~) chartered by the state of Washington.

(3) The director may visit and examine into the affairs of any nonpublicly held corporation in which the bank(~~(, trust company,)~~) or bank holding company has an investment or any publicly held corporation the capital stock of which is controlled by the bank(~~(, trust company,)~~) or bank holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes.

(4) The director may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the federal deposit insurance corporation.

(5) Any willful false swearing in any examination is perjury in the second degree.

(6) The director may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic bank holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic bank holding companies, or of out-of-state bank holding companies owning a bank (~~(or trust company)~~) the principal operations of which are conducted in this state. The director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The director may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state.

(7) Copies from the records, books, and accounts of a bank(~~(-trust company,))~~) or holding company shall be competent evidence in all cases, equal with originals thereof, if there is annexed to such copies an affidavit taken before a notary public or clerk of a court under seal, stating that the affiant is the officer of the bank(~~(-trust company,))~~) or holding company having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned.

**Sec. 108.** RCW 30.04.070 and 2013 c 76 s 2 are each amended to read as follows:

(1) In order to cover the costs of the operation of the department's division of banks and to establish and maintain a reasonable reserve for the division of banks, the department may charge and collect the costs of examination, filing and other service fees, and semiannual charges for recoupment of nondirect expenses related to the examination of financial institutions regulated by the department, as provided for in this section.

(2) The director shall collect from each bank, savings bank, trust company, savings association, holding company under this title, holding company under Title 32 RCW, business development company under chapter 31.24 RCW, agricultural lender under chapter 31.35 RCW, and small business lender under chapter 31.40 RCW:

(a) For each examination of its condition the estimated actual cost of such examination; and

(b) For services in relation to required filings, applications, requests for waiver, investigations, approvals, determinations, certifications, agreements, actions, directives, and orders made by or to the director.

(3) In addition to collecting the estimated actual cost of examination and other fees authorized by subsection (2) of this section, the director may collect a semiannual charge for recoupment of nondirect expenses related to the examination of a bank (~~(or trust company)~~) under this title, a trust company, a savings bank under Title 32 RCW, and a savings association under Title 33 RCW, based upon the assets of the bank, savings bank, or savings association, or assets under management of the trust company, which shall be computed upon the asset value reflected in the institution's most recent report of condition. The rate must be the same for banks, savings banks, and savings associations, and there may be a separate rate for trust companies that must be the same for all trust companies.

(4) Every bank or trust company, savings bank, savings association, holding company, business development company, state agricultural lender, or state small business lender shall also pay to the secretary of state for filing any instrument the same fees as are required of general corporations for filing corresponding instruments, and also the same license fees as are required of general corporations.

(5) The director shall establish, set, and adjust by rule the amount of all fees and charges authorized by subsections (2) and (3) of this section.

**Sec. 109.** RCW 30.04.075 and 2010 c 88 s 9 are each amended to read as follows:

(1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of banks, trust companies, or alien

banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(~~((2))~~) (6) (as recodified by this act), and information obtained by the director and the director's staff relating to examination and supervision of bank holding companies owning a bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports, work papers, supervisory agreements or directives, orders, or other information obtained in the conduct of an examination or investigation prepared by the director's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(~~((2))~~) (6) (as recodified by this act), and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined bank, trust company, or alien bank, or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed bank, trust company, or alien bank;

(g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the bank or trust company; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) All examination reports, work papers, supervisory agreements or directives, orders, and other information obtained in the conduct of an examination or investigation furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential and no person, agency, or authority to whom reports are

furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the director and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(~~((2))~~) (6) (as recodified by this act), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230 (as recodified by this act), shall not be subject to public disclosure under chapter 42.56 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Notwithstanding any other provision of this section or other applicable law, a bank, trust company, alien bank, or holding company is not in violation of this section on account of its compliance with required reporting to the federal securities and exchange commission, including the disclosure of any order of the director.

(9) Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

**Sec. 110.** RCW 30.04.111 and 2013 c 76 s 3 are each amended to read as follows:

(1) The total loans and extensions of credit by a bank (~~(or trust company)~~) to a person outstanding at any one time shall not exceed twenty percent of the capital and surplus of such bank (~~(or trust company)~~). A loan or extension of credit made by a bank (~~(or trust company)~~) does not violate this section if the loan or extension of credit would qualify for an exception to the lending limit for a national bank under rules adopted by the United States office of the comptroller of the currency, or successor federal agency with authority over national banks and federal savings associations.

(2) For the purposes of this section, the terms "borrower," "capital and surplus," "derivative transaction," "loans and extensions of credit," and "person" shall have the same meaning as those terms are defined in section 32.2 of Title 12 of the United States code of federal regulations, 12 C.F.R. Sec. 32.2, except that "loans and extensions of credit" also includes repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions between a bank and a borrower if the federal deposit insurance corporation requires such treatment for a state insured bank or the board of governors of the federal reserve system requires such treatment for member state banks.

(3) The director may prescribe rules to administer and carry out the purposes of this section, including without limitation rules (a) to define or further define terms used in this section, (b) to establish limits or requirements other than those specified in this section for particular classes or categories of loans and extensions of credit, (c) to determine when a loan putatively made to a person shall, for purposes of this section, be attributed to another person, (d) to set standards for computation of time in relation to determining limits on loans and extensions of credit, and (e) to implement and incorporate other changes in limits on loans and extensions of credit necessary to conform to federal statute and rule required or otherwise authorized by this section. In adopting the rules, the director shall be guided by rulings of the United States comptroller of the currency, or successor federal banking regulator, that govern limits on loans and extensions of credit applicable to national banks and federal savings associations. In lieu of the adoption by the department of a rule applicable to specific types of transactions, a bank, unless otherwise approved by the director, shall conform to all applicable rulings of the comptroller of the currency, or successor federal banking regulator, which (i) relate to national banks and federal savings associations, (ii) govern such specific types of transactions or circumstances, and (iii) are consistent with this section and the department's adopted rules.

(4)(a) A loan or extension of credit that was within the limit on loans and extensions of credit when made is not a violation but will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's (~~(or trust company's)~~) limit on loans and extensions of credit because:

(i) The bank's (~~(or trust company's)~~) capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(ii) Collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value.

(b) A bank (~~(or trust company)~~) shall make reasonable efforts to bring a loan or extension of credit that is nonconforming under (a)(i) of this subsection into

conformity with the bank's (~~or trust company's~~) limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(c) A bank (~~or trust company~~) must bring a loan or extension of credit that is nonconforming under (a)(ii) of this subsection into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's (~~or trust company's~~) control prevent the bank or trust company from taking action.

(d) Notwithstanding any provision of this subsection (4), the director may by rule or interpretation prescribe standards for treatment of nonconforming extensions of credit that are derivatives transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or member state banks, rely upon rules or interpretations of the federal deposit insurance corporation or the board of governors of the federal reserve system, as applicable.

(5) Notwithstanding any provision of this section to the contrary, in the event that a bank's capital declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the director may, upon written application and in the exercise of the director's discretion, grant the bank temporary permission to fund loans and extensions of credit in excess of the bank's limit on loans and extensions of credit under this section. In the exercise of discretion, the director may further specify conditions for granting such emergency exception and may limit emergency lending authority under this section to particular types or classes of loans and extensions of credit.

(6) Notwithstanding any provision of this section to the contrary, the director, in the exercise of discretion, may grant an exception to the limit on loans and extensions of credit otherwise required by this section, based on extenuating facts and circumstances. In deciding whether to grant an exception under this subsection, the director shall consider:

(a) The proposed transaction for which the exception is sought;

(b) How the requested exception would affect the capital adequacy and safety and soundness of the requesting bank if the exception is not granted or, if the exception is granted, if the proposed borrower should ultimately default;

(c) How the requested exception would affect the loan portfolio diversification of the requesting bank;

(d) The competency of management to handle the proposed transaction and any resulting safety and soundness issues;

(e) The marketability and value of the proposed collateral; and

(f) The extenuating facts and circumstances that warrant an exception in light of the purpose of limit on loans and extensions of credit set forth in this section.

**Sec. 111.** RCW 30.04.120 and 1994 c 92 s 13 are each amended to read as follows:

The shares of stock of every bank (~~and trust company~~) shall be deemed personal property. No such corporation shall hereafter make any loan or discount on the security of its own capital stock, nor be the purchaser or holder

of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by any such bank (~~(or trust company)~~) for its own account of any shares of stock of any corporation, except a federal reserve bank of which such corporation shall become a member, and then only to the extent required by such federal reserve bank: PROVIDED, That any bank (~~(or trust company)~~) may purchase, acquire and hold shares of stock in any other corporation which shares have been previously pledged as security to any loan or discount made in good faith and such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith and stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within two years from the time of its purchase or acquisition. Any time limit imposed in this section may be extended by the director upon cause shown. Banks (~~and trust companies~~) are authorized to make loans on the security of the capital stock of a bank (~~(or trust company)~~) other than the lending corporation.

**Sec. 112.** RCW 30.04.125 and 1994 c 256 s 33 and 1994 c 92 s 14 are each reenacted and amended to read as follows:

Unless otherwise prohibited by law, any state bank (~~(or trust company)~~) may invest in the capital stock of corporations organized to conduct the following businesses:

(1) A safe deposit business: PROVIDED, That the amount of investment does not exceed fifteen percent of its capital stock and surplus, without the approval of the director;

(2) A corporation holding the premises of the bank or its branches: PROVIDED, That without the approval of the director, the investment of such stock shall not exceed, together with all loans made to the corporation by the bank, a sum equal to the amount permitted to be invested in the premises by RCW 30.04.210 (as recodified by this act);

(3) Stock in a small business investment company licensed and regulated by the United States as authorized by the small business act, Public Law 85-536, 72 Statutes at Large 384, in an amount not to exceed five percent of its capital and surplus without the approval of the director;

(4) Capital stock of a banking service corporation or corporations. The total amount that a bank may invest in the shares of such corporation may not exceed ten percent of its capital and surplus without the approval of the director. A bank service corporation may not engage in any activity other than those permitted by the bank service corporation act, 12 U.S.C. Sec. 1861, et seq., as subsequently amended and in effect on December 31, 1993. The performance of any service, and any records maintained by any such corporation for a bank, shall be subject to regulation and examination by the director and appropriate federal agencies to the same extent as if the services or records were being performed or maintained by the bank on its own premises;

(5) Capital stock of a federal reserve bank to the extent required by such federal reserve bank;

(6) A corporation engaging in business activities that have been determined by the board of governors of the federal reserve system or by the United States



congress to be closely related to the business of banking, as of December 31, 1993;

(7) A governmentally sponsored corporation engaged in secondary marketing of loans and the stock of which must be owned in order to participate in its marketing activities;

(8) A corporation in which all of the voting stock is owned by the bank and that engages exclusively in nondeposit-taking activities that are authorized to be engaged in by the bank or trust company;

(9) A bank (~~(or trust company)~~) may purchase for its own account shares of stock of a bank or a holding company that owns or controls a bank if the stock of the bank or company is owned exclusively, except to the extent directly qualifying shares are required by law, by depository institutions and the bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees. In no event may the total amount of such stock held by a bank (~~(or trust company)~~) in any bank or bank holding company exceed at any time ten percent of its capital stock and paid-in and unimpaired surplus, and in no event may the purchase of such stock result in a bank (~~(or trust company)~~) acquiring more than twenty-five percent of any class of voting securities of such bank or company. Such a bank or bank holding company shall be called a "banker's bank."

**Sec. 113.** RCW 30.04.127 and 2010 c 88 s 11 are each amended to read as follows:

(1) A bank (~~(or trust company)~~), alone or in conjunction with other entities, may form, incorporate, or invest in corporations or other entities, whether or not such other corporation or entity is related to the bank's (~~(or trust company's)~~) business. The aggregate amount of funds invested, or used in the formation of corporations or other entities under this section shall not exceed ten percent of the assets or fifty percent of the net worth, whichever is less, of the bank (~~(or trust company)~~). For purposes of this subsection, "net worth" means the aggregate of capital, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors.

(2) A bank (~~(or trust company)~~) may engage in an activity permitted under this section only with the prior authorization of the director and subject to such requirements, restrictions, or other conditions as the director may adopt by rule, order, directive, standard, policy, memorandum(~~(+)~~), or other written communication with regard to the activity. In approving or denying a proposed activity, the director shall consider the financial and management strength of the institution, the convenience and needs of the public, and whether the proposed activity should be conducted through a subsidiary or affiliate of the bank. The director may not authorize under this section and no bank (~~(or trust company)~~) may act as an insurance or travel agent unless otherwise authorized by state statute.

**Sec. 114.** RCW 30.04.129 and 1985 c 301 s 2 are each amended to read as follows:

Any bank (~~(or trust company)~~) may invest in obligations issued or guaranteed by any multilateral development bank in which the United States government formally participates. Such investment in any one multilateral

development bank shall not exceed five percent of the bank's (~~or trust company's~~) paid-in capital and surplus.

**Sec. 115.** RCW 30.04.130 and 1994 c 256 s 34 and 1994 c 92 s 16 are each reenacted and amended to read as follows:

Based on examinations directed pursuant to RCW 30.04.060 (as recodified by this act) or other appropriate information, all assets or portion thereof that the director may have required a bank (~~or trust company~~) to charge off shall be charged off. No bank (~~or trust company~~) shall enter or at any time carry on its books any of its assets or liabilities at a valuation contrary to generally accepted accounting principles.

**Sec. 116.** RCW 30.04.140 and 2011 c 336 s 744 are each amended to read as follows:

No bank (~~or trust company~~) shall pledge or hypothecate any of its securities or assets to any depositor, except that it may qualify as depository for United States deposits, or other public funds, or funds held in trust and deposited by any public officer by virtue of his or her office, or as a depository for the money of estates under the statutes of the United States pertaining to bankruptcy or funds deposited by a trustee or receiver in bankruptcy appointed by any court of the United States or any referee thereof, or funds held by the United States or the state of Washington, or any officer thereof in trust, or for funds of corporations owned or controlled by the United States, and may give such security for such deposits as are required by law or by the officer making the same; and it may give security to its trust department for deposits with itself which represent trust funds invested in savings accounts or which represent fiduciary funds awaiting investment or distribution.

**Sec. 117.** RCW 30.04.180 and 1994 c 256 s 35 and 1994 c 92 s 17 are each reenacted and amended to read as follows:

No bank (~~or trust company~~) shall declare or pay any dividend to an amount greater than its retained earnings, without approval from the director. The director shall in his or her discretion have the power to require any bank (~~or trust company~~) to suspend the payment of any and all dividends until all requirements that may have been made by the director shall have been complied with; and upon such notice to suspend dividends no bank (~~or trust company~~) shall thereafter declare or pay any dividends until such notice has been rescinded in writing. A dividend is payable in cash, property, or capital stock, but the restrictions on the payment of a dividend (other than restrictions imposed by the director pursuant to his or her authority to require the suspension of the payment of any or all dividends) do not apply to a dividend payable by the bank (~~or trust company~~) solely in its own capital stock. For purposes of this section, "retained earnings" shall be determined by generally accepted accounting principles.

**Sec. 118.** RCW 30.04.210 and 1994 c 256 s 36 and 1994 c 92 s 18 are each reenacted and amended to read as follows:

A bank (~~or trust company~~) may purchase, hold, and convey real estate for the following purposes:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other space in the same building to rent as a source of income: PROVIDED, That any bank (~~or trust company~~) shall not invest for such purposes more than the greater of: (a) Fifty percent of its capital,

surplus, and undivided profits; or (b) one hundred twenty-five percent of its capital stock without the approval of the director.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of its business.

(3) Such as it shall purchase at sale under judgments, decrees, liens, or mortgage foreclosures, from debts owed to it.

(4) Such as a trust company receives in trust or acquires pursuant to the terms or authority of any trust.

(5) Such as it may take title to or for the purpose of investing in real estate conditional sales contracts.

(6) Such as shall be purchased, held, or conveyed in accordance with RCW 30.04.212 (as recodified by this act) granting banks the power to invest directly or indirectly in unimproved or improved real estate.

**Sec. 119.** RCW 30.04.212 and 1994 c 92 s 19 are each amended to read as follows:

(1) In addition to the powers granted under RCW 30.04.210 (as recodified by this act) and subject to the limitations and restrictions contained in this section and in RCW 30.60.010 and 30.60.020 (as recodified by this act), a bank:

(a) May acquire any interest in unimproved or improved real property;

(b) May construct, alter, and manage improvements of any description on real estate in which it holds a substantial equity interest.

(2) The powers granted under subsection (1) of this section do not include, and a bank may not:

(a) Manage any real property in which the bank does not own a substantial equity interest;

(b) Engage in activities of selling, leasing, or otherwise dealing in real property as an agent or broker; or

(c) Acquire any equity interest in any one to four-family dwelling that is used as a principal residence by the owner of the dwelling; however, this shall not prohibit a bank from making loans secured by such dwelling where all or part of the bank's anticipated compensation results from the appreciation and sale of such dwelling.

(3) The aggregate amount of funds invested under this section shall not exceed two percent of a bank's capital, surplus, and undivided profits. Such percentage amount shall be increased based upon the most recent community reinvestment rating assigned to a bank by the director in accordance with RCW 30.60.010 (as recodified by this act), as follows:

- |                               |                 |
|-------------------------------|-----------------|
| (a) Excellent performance:    | Increase to 10% |
| (b) Good performance:         | Increase to 8%  |
| (c) Satisfactory performance: | Increase to 6%  |
| (d) Inadequate performance:   | Increase to 3%  |
| (e) Poor performance:         | No increase     |

(4) For purposes of this section only, each bank will be deemed to have been assigned a community reinvestment rating of "1" for the period beginning with January 1, 1986, and ending December 31, 1986. Thereafter, each bank will be assigned an annual rating in accordance with RCW 30.60.010 (as recodified by this act), which rating shall remain in effect for the next succeeding year and until the director has conducted a new investigation and assigned a new rating for the next succeeding year, the process repeating on an annual basis.

(5) No bank may at any time be required to dispose of any investment made in accordance with this section due to the fact that the bank is not then authorized to acquire such investment, if such investment was lawfully acquired by the bank at the time of acquisition.

(6) The director shall limit the amount that may be invested in a single project or investment and may adopt any rule necessary to the safe and sound exercise of powers granted by this section.

**Sec. 120.** RCW 30.04.214 and 1985 c 329 s 6 are each amended to read as follows:

(1) An amount equal to ten percent of the aggregate amount invested in real estate in accordance with RCW 30.04.212 (as recodified by this act) shall be placed in qualifying community investments as defined in subsection (2) of this section.

(2) "Qualifying community investment" means any direct or indirect investment or extension of credit made by a bank in projects or programs designed to develop or redevelop areas in which persons with low or moderate incomes reside, designed to meet the credit needs of such low or moderate-income areas, or that primarily benefits low and moderate-income residents of such areas. The term includes, but is not limited to, any of the following within the state of Washington:

(a) Investments in governmentally insured, guaranteed, subsidized, or otherwise sponsored programs for housing, small farms, or businesses that address the needs of the low and moderate-income areas.

(b) Investments in residential mortgage loans, home improvements loans, housing rehabilitation loans, and small business or small farm loans originated in low and moderate-income areas, or the purchase of such loans originated in low and moderate-income areas.

(c) Investments for the preservation or revitalization of urban or rural communities in low and moderate-income areas.

The term does not include personal installment loans, loans made to purchase, or loans secured by an automobile.

(3) A qualifying community investment made by an entity that wholly owns a bank, is wholly owned by a bank, or is wholly owned by an entity that wholly owns the bank is deemed to have been made by a bank to satisfy the requirements of subsection (1) of this section.

**Sec. 121.** RCW 30.04.215 and 2013 c 76 s 4 are each amended to read as follows:

(1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank (~~(or trust company)~~) may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of July 28, 2013.

(2) A bank (~~(or trust company)~~) that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and

advantage will be promoted, whether the activity is apt to create an unsafe and unsound practice by the bank (~~(or trust company)~~) and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the bank (~~(or trust company)~~) is otherwise qualified, he or she shall immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the bank (~~(or trust company)~~) is not otherwise qualified, he or she shall promptly inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

(3) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a bank has under the laws of this state, a bank shall have the powers and authorities conferred as of July 28, 1985, or as of any subsequent date not later than July 28, 2013, upon any federally chartered bank doing business in this state. A bank may exercise the powers and authorities conferred on a federally chartered bank after July 28, 2013, only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of depositors, borrowers, or the general public; and

(b) Maintains the fairness of competition and parity between state-chartered banks and federally chartered banks.

(4) Notwithstanding any other provisions of law, a bank has the powers and authorities that an out-of-state state bank operating a branch in Washington has if the director finds that the exercise of such powers and authorities serves the convenience and advantage of depositors and borrowers, or the general public, and maintains the fairness of competition and parity between state-chartered banks and out-of-state state banks.

(5) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(6) The restrictions, limitations, and requirements applicable to specific powers and authorities of federally chartered banks and out-of-state state banks, as applicable, shall apply to banks exercising those powers and authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers and authorities granted banks solely under this section.

(7) The director may require a bank to provide notice to the director prior to implementation of a plan to develop, improve, or continue holding real estate, including capitalized and operating leases, acquired through any means in full or partial satisfaction of a debt previously contracted, under circumstances which a national bank would be required to provide notice to the comptroller of the currency prior to implementation of such a plan. The director may adopt rules or issue orders, directives, standards, policies, memoranda, or other official

communications to specify guidance with regard to the exercise of the powers and authorities to expend such funds as are needed to enable a bank (~~(or trust company)~~) to recover its total investment to the fullest extent authorized for a national bank under the national bank act, 12 U.S.C. Sec. 29.

(8) Any activity which may be performed by a bank (~~(or trust company)~~), except the taking of deposits, may be performed by (a) a corporation or (b) another entity approved by the director, which in either case is owned in whole or in part by the bank (~~(or trust company)~~).

**Sec. 122.** RCW 30.04.220 and 1994 c 92 s 21 are each amended to read as follows:

Every corporation, which on March 10, 1917, was actually and publicly engaged in banking or trust business in this state in full compliance with the laws hereof, which were in force immediately prior to March 10, 1917, may, if it otherwise complies with the provisions of this title, continue its said business, subject to the terms and regulations hereof and without amending its articles of incorporation, although its name and the amount of its capital stock, the number or length of terms of its directors or the form of its articles of incorporation do not comply with the requirements of this title: PROVIDED,

(1) That any such bank, which was by the director lawfully permitted to operate, although its capital stock was not fully paid in, shall pay in the balance of its capital stock at such times and in such amounts as the director may require;

(2) That, except with written permission of the director, any bank (~~(or trust company)~~) which shall amend its articles of incorporation must in such event comply with all the requirements of this title.

**Sec. 123.** RCW 30.04.225 and 1986 c 279 s 11 are each amended to read as follows:

In the absence of an express prohibition in its articles of incorporation, the making of contributions or gifts for the public welfare, or for charitable, scientific, or educational purposes by a state bank (~~(or trust company)~~) is within its powers and shall be deemed to inure to the benefit of the bank.

**Sec. 124.** RCW 30.04.230 and 2005 c 274 s 252 are each amended to read as follows:

(1) A corporation or association organized under the laws of this state or licensed to transact business in the state may acquire any or all shares of stock of any bank (~~(or trust company)~~) or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank (~~(or trust company)~~) in accordance with this title.

(2) Unless the terms of this section or RCW 30.04.232 (as recodified by this act) are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank (~~(or trust company)~~) or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic

bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the director. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, (~~trust company,~~) national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the director. The director shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the director may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and all examination reports and information obtained by the director and the director's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.56 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the director and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the director as arbitrary and capricious or unlawful.

(b) The director shall find that:

(i) The bank(~~, trust company,~~) or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank(~~, trust company,~~) or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the director shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank(~~, trust company,~~) or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank(~~, trust company,~~) or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the director in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The director shall consider:

- (i) The financial institution structure of this state; and
- (ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank.

**Sec. 125.** RCW 30.04.232 and 1996 c 2 s 3 are each amended to read as follows:

(1) In addition to an acquisition pursuant to RCW 30.04.230 (as recodified by this act), an out-of-state bank holding company may acquire more than five percent of the voting stock or all or substantially all of the assets of a bank(~~(; trust company,)~~) or national banking association, the principal operations of which are conducted within this state, if the bank(~~(; trust company,)~~) or national banking association or its predecessor, the voting stock of which is to be acquired, shall have been conducting business for a period of not less than five years.

(2) The director, consistent with 12 U.S.C. Sec. 1842(d)(2)(D), may approve an acquisition if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries of those banks or holding companies.

(3) As used in this section, the terms "bank holding company," "domestic bank holding company," and "out-of-state bank holding company" shall have the meanings provided in RCW 30.04.230 (as recodified by this act).

**Sec. 126.** RCW 30.04.240 and 2013 c 76 s 6 are each amended to read as follows:

(1) A person authorized under this title or Title 30B RCW (the new title created under section 3 of this act) to engage in a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties except as otherwise provided in this section.

(2) Any person connected with a bank (~~(or trust company)~~) who shall, contrary to this section or any other provision of law, commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding any other provisions of law, any fiduciary holding securities in its fiduciary capacity or any state bank(~~(;)~~) or national bank(~~(; or trust company)~~) holding securities as fiduciary or as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities: (a) In a clearing corporation (as defined in Article 8 of the Uniform Commercial Code, chapter 62A.8 RCW); (b) within another state bank, national bank, or trust company having trust power whether located inside or outside of this state; or (c) within itself. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation or state bank, national



bank, or trust company holding the securities as the depository, with any other such securities deposited in such clearing corporation or depository by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, national bank, or trust company as a fiduciary or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books of such clearing corporation, state bank, national bank, or trust company without physical delivery or alteration of certificates representing such securities. A state bank, national bank, or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state-chartered banks (~~and trust companies~~), the director and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A state bank~~(;)~~ or national bank~~(; or trust company)~~ acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such state bank~~(;)~~ or national bank~~(; or trust company)~~ in such clearing corporation or state bank, national bank, or trust company acting as such depository for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation or state bank, national bank, or trust company acting as such depository for its account as such fiduciary.

This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any state bank~~(;)~~ or national bank~~(; or trust company)~~ holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on March 14, 1973 or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

**Sec. 127.** RCW 30.04.260 and 2013 c 76 s 7 are each amended to read as follows:

(1) No person, other than an attorney-at-law or law firm as permitted by other law, which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator, or guardian; and such person whose officers or agents shall solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator, or guardian in any of the courts of this state.

(2) Any person authorized under this title or Title 30B RCW (the new title created under section 3 of this act) to engage in a trust business, which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, and any officer, agent, or employee of such person who shall solicit legal business is guilty of a gross misdemeanor.

**Sec. 128.** RCW 30.04.285 and 2007 c 167 s 1 are each amended to read as follows:

(1) The director's approval of a branch within the United States or any territory of the United States or in any foreign country shall be conditioned on a finding by the director that the bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. A bank chartered under this title may exercise any powers and authorities at any branch outside Washington that are permissible for a bank operating in that state where the branch is located, except to the extent those activities are expressly prohibited by the laws of this state or by any rule or order of the director applicable to the state bank. However, the director may waive any limitation in writing with respect to powers and authorities that the director determines do not threaten the safety or soundness of the state bank.

(2) An out-of-state bank may acquire, establish, or maintain a branch in Washington within one mile of an affiliate commercial location only to the same extent permitted for a Washington bank under applicable state and federal law. For purposes of this subsection, "bank" means any national bank, state bank, and district bank, as defined in 12 U.S.C. Sec. 1813(a); "out-of-state bank" means a bank whose home state is a state other than Washington; and "Washington bank" means a bank whose home state is Washington. "Home state" has the same meaning as defined in RCW 30.38.005 (as recodified by this act).

**Sec. 129.** RCW 30.04.330 and 1955 c 33 s 30.04.330 are each amended to read as follows:

Any bank, which term for the purpose of this section shall include but not be limited to any state bank, national bank or association, mutual savings bank, savings and loan association, (~~trust company~~) federal reserve bank, federal home loan bank, and federal savings and loan association, federal credit union, and state credit union doing business in this state, may remain closed on Saturdays and any Saturday on which a bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act, authorized, required or permitted to be performed at or by or with respect to any bank, as herein defined, on a Saturday, may be performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such closing.

**Sec. 130.** RCW 30.04.375 and 1982 c 86 s 1 are each amended to read as follows:

Any bank (~~or trust company~~) may invest in the stock or participation certificates of production credit associations, federal intermediate credit banks and the stock or other evidences of participation of federal land banks in amounts consistent with safe and sound practice in conducting the business of the (~~trust company or~~) bank.

**Sec. 131.** RCW 30.04.380 and 1986 c 279 s 13 are each amended to read as follows:

Any bank (~~or trust company~~) may invest an amount not exceeding ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered under the laws of the United States, or of any state thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions.

**Sec. 132.** RCW 30.04.390 and 1986 c 279 s 14 are each amended to read as follows:

Any bank (~~(or trust company)~~) may acquire and hold, directly or indirectly, stock or other evidence of indebtedness or ownership in one or more banks organized under the law of a foreign country or a dependency or insular possession of the United States.

**Sec. 133.** RCW 30.04.400 and 1977 ex.s. c 246 s 1 are each amended to read as follows:

As used in RCW 30.04.400 through 30.04.410 (as recodified by this act), the following words shall have the following meanings:

(1) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the "controlled" entity;

(2) "Acquiring party" means the person acquiring control of a bank through the purchase of stock; and

(3) "Person" means any individual, corporation, partnership, association, business trust, or other organization.

**Sec. 134.** RCW 30.04.405 and 1994 c 92 s 29 are each amended to read as follows:

(1) It is unlawful for any person to acquire control of a bank until thirty days after filing with the director a copy of the notice of change of control required to be filed with the federal deposit insurance corporation or a completed application. The notice or application shall be under oath and contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(a) The identity, banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure for management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(2) Notwithstanding any other provision of this section, a bank or domestic bank holding company as defined in RCW 30.04.230 (as recodified by this act) need only notify the director of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(3) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person, as defined in RCW 30.04.400(3) (as recodified by this act), who has an interest in or controls a person filing an application under this subsection.

(4) When a corporation is required to file an application under this section, the director may require that information required by subsection (1)(a), (b), and (f) of this section be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(5) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C., Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C., Sec. 78(a)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(6) Any acquiring party shall also deliver a copy of any notice or application required by this section to the bank proposed to be acquired within two days after the notice or application is filed with the director.

(7) Any acquisition of control in violation of this section shall be ineffective and void.

(8) Any person who willfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

**Sec. 135.** RCW 30.04.410 and 2005 c 274 s 253 are each amended to read as follows:

(1) The director may disapprove the acquisition of a bank (~~(or trust company)~~) within thirty days after the filing of a complete application pursuant to RCW 30.04.405 (as recodified by this act) or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the bank or might prejudice the interests of the bank depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the bank, to sell its assets, to merge it with any person, or to make any other major change in its

business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the bank indicates that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

(3) The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.56 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer, or of any director, that occurs in the next twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer or directors.

**Sec. 136.** RCW 30.04.450 and 2010 c 88 s 15 are each amended to read as follows:

(1) The director may issue and serve a notice of charges upon a bank (~~(or trust company)~~) when in the opinion of the director:

(a) It has engaged in an unsafe and unsound practice related to the conduct of business of the bank (~~(or trust company)~~);

(b) It has violated any provision of RCW 30.04.050 (as recodified by this act); or

(c) It is planning, attempting, or currently conducting any act prohibited in (a) or (b) of this subsection.

(2) The director may issue and serve a notice of charges upon a holding company when, in the opinion of the director:

(a) The holding company has committed a violation of RCW 30.04.050(2) (as recodified by this act);

(b) The conduct of the holding company has resulted in an unsafe and unsound practice at the bank (~~(or trust company)~~) or a violation of any provision of RCW 30.04.050 (as recodified by this act) by the bank (~~(or trust company)~~); or

(c) The holding company is planning, attempting, or currently conducting any act prohibited in (a) or (b) of this subsection.

(3) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank(~~(-trust company,))~~ or holding company. The hearing shall be set not earlier than ten days or later than thirty days after service

of the notice unless a later date is set by the director at the request of the bank(~~(, trust company,)~~) or holding company.

(4) Unless the bank(~~(, trust company,)~~) or holding company shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the bank(~~(, trust company,)~~) or holding company an order to cease and desist from the violation or practice. The order may require the bank(~~(, trust company,)~~) or holding company, and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank(~~(, trust company,)~~) or holding company to take affirmative action to correct the conditions resulting from the violation or practice.

(5) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank (~~(or trust company)~~) concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

**Sec. 137.** RCW 30.04.455 and 2010 c 88 s 16 are each amended to read as follows:

(1) The director may also issue a temporary order requiring a bank (~~(or trust company,)~~) or its holding company, or both, to cease and desist from any action or omission, as specified in RCW 30.04.450 (as recodified by this act), or its continuation, which the director has determined:

(a) Constitutes an unsafe and unsound practice or a material violation of RCW 30.04.050 (as recodified by this act) affecting the bank (~~(or trust company,)~~);

(b) Has resulted in the bank (~~(or trust company,)~~) being less than adequately capitalized; or

(c) Is likely to cause insolvency or substantial dissipation of assets or earnings of the bank (~~(or trust company,)~~) or to otherwise seriously prejudice the interests of its depositors or trust beneficiaries.

(2) The order is effective upon service on the bank(~~(, trust company,)~~) or holding company, and remains in effect unless set aside, limited, or suspended by the superior court in proceedings under RCW 30.04.460 (as recodified by this act) pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the bank(~~(, trust company,)~~) or holding company under RCW 30.04.450 (as recodified by this act).

**Sec. 138.** RCW 30.04.460 and 2010 c 88 s 17 are each amended to read as follows:

(1) Within ten days after a bank(~~(, trust company,)~~) or holding company has been served with a temporary cease and desist order, the bank(~~(, trust company,)~~) or holding company may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the

order pending the completion of the administrative proceedings pursuant to the notice served under RCW 30.04.455 (as recodified by this act).

(2) The superior court shall have jurisdiction to issue the injunction.

**Sec. 139.** RCW 30.04.465 and 1994 c 92 s 33 are each amended to read as follows:

In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 30.04.455 (as recodified by this act), the director may apply to the superior court of the county of the principal place of business of the bank ~~((or trust company))~~ for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

**Sec. 140.** RCW 30.04.470 and 2010 c 88 s 18 are each amended to read as follows:

(1) Any administrative hearing provided in RCW 30.04.450 or 30.12.042 (as recodified by this act) must be conducted in accordance with chapter 34.05 RCW and held at the place designated by the director, and may be conducted by the department. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

(2) Within sixty days after the hearing, the director shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 30.04.450 or 30.12.042 (as recodified by this act), as the case may be.

(3) Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected bank ~~((or trust company))~~ under subsection (5) of this section and until the record in the proceeding has been filed as therein provided, the director may at any time modify, terminate, or set aside any order upon such notice and in such manner as he or she shall deem proper. Upon filing the record, the director may modify, terminate, or set aside any order only with permission of the court.

(4) The judicial review provided in this section is exclusive for orders issued under RCW 30.04.450 and 30.12.042 (as recodified by this act).

(5) Any party to the proceeding or any person required by an order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042 (as recodified by this act) to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected bank ~~((or trust company))~~ within ten days after the date of service of the order a written petition praying that the order of the director be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the director and the director shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the director except that the director may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(6) The commencement of proceedings for judicial review under subsection (5) of this section shall not operate as a stay of any order issued by the director unless specifically ordered by the court.

(7) Service of any notice or order required to be served under RCW 30.04.450, 30.04.455, 30.12.040 or 30.12.042 (as recodified by this act) shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state.

**Sec. 141.** RCW 30.04.475 and 2010 c 88 s 19 are each amended to read as follows:

(1) The director may apply to the superior court of the county of the principal place of business of the bank (~~(or trust company)~~) affected for the enforcement of any effective and outstanding order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042 (as recodified by this act), and the court shall have jurisdiction to order compliance therewith.

(2) No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 30.04.460, 30.04.465, and 30.04.470 (as recodified by this act).

**Sec. 142.** RCW 30.04.500 and 1977 ex.s. c 301 s 10 are each amended to read as follows:

RCW 30.04.505 through 30.04.515 (as recodified by this act) shall be known and may be cited as the "fairness in lending act".

**Sec. 143.** RCW 30.04.505 and 1977 ex.s. c 301 s 11 are each amended to read as follows:

As used in RCW 30.04.505 through 30.04.515 (as recodified by this act):

(1) "Financial institution" means any bank (~~(or trust company, mutual)~~), savings bank, credit union, mortgage company, or savings and loan association which operates or has a place of business in this state whether regulated by the state or federal government.

(2) "Particular type of loan" refers to a class of loans which is substantially similar with respect to the following:

(a) FHA, VA, or conventional (~~(as defined in RCW 19.106.030(2))~~) loans;

(b) Uniform or nonuniform payment;

(c) Uniform or nonuniform rate of interest;

(d) Purpose; and

(e) The location of the real estate offered as security for the loan as being inside or outside of that financial institution's lending area.

(3) "Varying the terms of a loan" includes, but is not limited to the following practices:

(a) Requiring a greater down payment than is usual for the particular type of a loan involved;

(b) Requiring a shorter period of amortization than is usual for the particular type of loan involved;

(c) Charging a higher interest rate than is usual for the particular type of loan involved;

(d) A deliberate underappraisal of the value of the property offered as security.



**Sec. 144.** RCW 30.04.510 and 1977 ex.s. c 301 s 12 are each amended to read as follows:

Subject to RCW 30.04.515 (as recodified by this act), it shall be unlawful for any financial institution, in processing any application for a loan to be secured by a single-family residence to:

(1) Deny or vary the terms of a loan on the basis that a specific parcel of real estate offered as security is located in a specific geographical area, unless building, remodeling, or continued habitation in such specific geographical area is prohibited or restricted by any local, state, or federal law or rules or regulations promulgated thereunder.

(2) Utilize lending standards that have no economic basis.

**Sec. 145.** RCW 30.04.515 and 1977 ex.s. c 301 s 13 are each amended to read as follows:

Nothing contained in RCW 30.04.505 through 30.04.510 (as recodified by this act) shall preclude a financial institution from considering sound underwriting practices in processing any application for a loan to any person. Such practices shall include the following:

(1) The willingness and the financial ability of the borrower to repay the loan.

(2) The market value of any real estate and of any other item of property proposed as security for any loan.

(3) Diversification of the financial institution's investment portfolio.

**Sec. 146.** RCW 30.04.555 and 1994 c 256 s 38 are each amended to read as follows:

A reorganization authorized under RCW 30.04.550 (as recodified by this act) shall be carried out in the following manner:

(1) A plan of reorganization specifying the manner in which the reorganization shall be carried out must be approved by a majority of the entire board of directors of the banking corporation. The plan shall specify the name of the acquiring corporation, the amount of cash, securities of the bank holding company, other consideration, or any combination thereof to be paid to the shareholders of the reorganizing corporation in exchange for their shares of the stock of the corporation. The plan shall also specify the exchange date or the manner in which such exchange date shall be determined, the manner in which the exchange shall be carried out, and such other matters, not inconsistent with this chapter, as shall be determined by the board of directors of the corporation.

(2) The plan of reorganization shall be submitted to the shareholders of the reorganizing corporation at a meeting to be held on the call of the directors. Notice of the meeting of shareholders at which the plan shall be considered shall be given by prepaid first-class mail at least twenty days before the date of the meeting, to each stockholder of record of the banking corporation. The notice shall state that dissenting shareholders will be entitled to payment of the value of only those shares which are voted against approval of the plan.

**Sec. 147.** RCW 30.04.560 and 1994 c 92 s 37 are each amended to read as follows:

If the shareholders approve the reorganization by a two-thirds vote of each class of shares entitled to vote under the terms of such shares, and if it is thereafter approved by the director and consummated, any shareholder of the

banking corporation who has voted shares against such reorganization at such meeting or has given notice in writing at or prior to such meeting to the banking corporation that he or she dissents from the plan of reorganization and has not voted in favor of the reorganization, shall be entitled to receive the value of the shares determined as provided in RCW 30.04.565 (as recodified by this act). Such dissenter's rights must be exercised by making written demand which shall be delivered to the corporation at any time within thirty days after the date of shareholder approval, accompanied by the surrender of the appropriate stock certificates.

**Sec. 148.** RCW 30.04.570 and 1994 c 92 s 39 are each amended to read as follows:

The reorganization and exchange authorized by RCW 30.04.550 through 30.04.570 (as recodified by this act) shall become effective as follows:

(1) If the board of directors and shareholders of the state banking corporation and the board of directors of the acquiring corporation approve the plan of reorganization, then both corporations shall apply for the approval of the director, providing such information as the director by rule may prescribe.

(2) If the director approves the reorganization, the director shall issue a certificate of reorganization to the state banking corporation.

(3) Upon the issuance of a certificate of reorganization by the director, or on such later date as shall be provided for in the plan of reorganization, the shares of the state banking corporation shall be deemed to be exchanged in accordance with the plan of reorganization, subject to the rights of dissenters under RCW 30.04.560 and 30.04.565 (as recodified by this act).

**NEW SECTION. Sec. 149.** (1) Notwithstanding any provisions of this title, wherever notice by publication is required by a bank, such notice may be undertaken by internet publication upon terms and conditions that the director may adopt by rule.

(2) Notice to shareholders required under this title may be undertaken by electronic means in the same manner as permitted for general business corporations under RCW 23B.01.410.

**Sec. 150.** RCW 30.08.010 and 1994 c 256 s 41 and 1994 c 92 s 42 are each reenacted and amended to read as follows:

When authorized by the director, as hereinafter provided, one or more natural persons, citizens of the United States, may incorporate a bank (~~(or trust company)~~) in the manner herein prescribed. No bank (~~(or trust company)~~) shall incorporate for less amount nor commence business unless it has a paid-in capital stock, surplus and undivided profits in the amount as may be determined by the director after consideration of the proposed location, management, and the population and economic characteristics for the area, the nature of the proposed activities and operation of the bank (~~(or trust company)~~), and other factors deemed pertinent by the director. Each bank (~~(and trust company)~~) shall before commencing business have subscribed and paid into it in the same manner as is required for capital stock, an amount equal to at least ten percent of the capital stock above required, that shall be carried in the undivided profit account and may be used to defray organization and operating expenses of the company. Any sum not so used shall be transferred to the surplus fund of the company before any dividend shall be declared to the stockholders.

**Sec. 151.** RCW 30.08.020 and 1999 c 14 s 11 are each amended to read as follows:

Persons desiring to incorporate a bank (~~(or trust company)~~) shall file with the director a notice of their intention to organize a bank (~~(or trust company)~~) in such form and containing such information as the director shall prescribe by rule, together with proposed articles of incorporation, which shall be submitted for examination to the director at his or her office.

The proposed articles of incorporation shall state:

- (1) The name of such bank (~~(or trust company)~~).
- (2) The city, village or locality and county where the head office of such corporation is to be located.
- (3) The nature of its business(~~(, whether that of a commercial bank, or a trust company)~~).
- (4) The amount of its capital stock, which shall be divided into shares of a par or no par value as may be provided in the articles of incorporation.
- (5) The names and places of residence and mailing addresses of the persons who as directors are to manage the corporation until the first annual meeting of its stockholders.
- (6) If there is to be preferred or special classes of stock, a statement of preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class; or a statement that the shares of each class shall have the attributes as shall be determined by the bank's board of directors from time to time with the approval of the director.

(7) Any provision granting the shareholders the preemptive right to acquire additional shares of the bank and any provision granting shareholders the right to cumulate their votes.

(8) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including any provision restricting the transfer of shares, any provision which under this title is required or permitted to be set forth in the bylaws, and any provision permitted by RCW 23B.17.030.

(9) Any provision the incorporators elect to so set forth, not inconsistent with law or the purposes for which the bank is organized, or any provision limiting any of the powers granted in this title.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers granted in this title. The articles of incorporation shall be signed by all of the incorporators.

**Sec. 152.** RCW 30.08.025 and 2011 c 52 s 1 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, if the conditions of this section are met, a bank(~~(, a trust company,)~~) or a holding company of a bank (~~(or a trust company,)~~) may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "bank" includes an applicant to become a bank or holding company of a bank(~~(, "trust company" includes an applicant to become a trust company,)~~) and "holding company" means a holding company of a bank (~~(or trust company)~~).

(2)(a) Before a bank(~~(, trust company,)~~) or holding company may organize as, or convert to, a limited liability company, the bank(~~(, trust company,)~~) or holding company must obtain approval of the director.

(b)(i) To obtain approval under this section from the director, the bank(~~(, trust company,)~~) or holding company must file a request for approval with the director at least ninety days before the day on which the bank(~~(, trust company,)~~) or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the bank(~~(, trust company,)~~) or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The bank(~~(, trust company,)~~) or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the bank, trust company, or holding company is vested in a board of managers or directors that:

(A) Is elected or appointed by the owners;

(B) Is not required to have owners of the bank, trust company, or holding company included on the board;

(C) Possesses adequate independence and authority to supervise the operation of the bank, trust company, or holding company; and

(D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(iv) Neither state law, nor the bank's(~~(, trust company's,)~~) or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the bank(~~(, trust company,)~~) or holding company is liable for the debts, liabilities, and obligations of the bank(~~(, trust company,)~~) or holding company in excess of the amount of the owner's investment;

(v) Neither state law, nor the bank's(~~(, trust company's,)~~) or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the bank(~~(, trust company,)~~) or holding company in order for any owner to transfer an ownership interest in the bank(~~(, trust company,)~~) or holding company, including voting rights;

(vi) The bank(~~(, trust company,)~~) or holding company is able to obtain new investment funding if needed to maintain adequate capital;

(vii) The bank(~~(, trust company,)~~) or holding company is able to comply with all legal and regulatory requirements for a federally insured depository

bank(~~(, trust company,)~~) or holding company of a federally insured depository bank, under applicable federal and state law; and

(viii) A bank(~~(, trust company,)~~) or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.

(4)(a) All rights, privileges, powers, duties, and obligations of a bank(~~(, trust company,)~~) or holding company, that is organized as a limited liability company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:

(i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a bank(~~(, trust company,)~~) or holding company organized as a limited liability company pursuant to this section; and

(ii) Without limitation, the following are inapplicable to a bank(~~(, trust company,)~~) or holding company organized as a limited liability company:

(A) Permitting automatic dissolution or suspension of a limited liability company as set forth in RCW 25.15.270(1), pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;

(B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in RCW 25.15.270(2);

(C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in RCW 25.15.270(3);

(D) Permitting dissociation of all the members of the limited liability company, as set forth in RCW 25.15.270(4); and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the bank(~~(, trust company,)~~) or holding company, a member's interest in the bank(~~(, trust company,)~~) or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the bank(~~(, trust company,)~~) or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the bank(~~(, trust company,)~~) or holding company including all economic rights and all voting rights.

(c) A bank(~~(, trust company,)~~) or holding company may not by agreement or otherwise change the application of (a) of this subsection to the bank(~~(, trust company,)~~) or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of a bank(~~(, trust company,)~~) or holding company organized as a limited liability company, regardless of resignation, dissociation, or disqualification, to the same

extent that directors of a bank(~~(, trust company,)~~) or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the bank, (~~(trust company,)~~) holding company, or (~~(all three)~~) both, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 30.44.270 (as recodified by this act) or applicable federal law, or both, to exercise the powers and authorities of a receiver for the bank(~~(, trust company,)~~) or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a bank(~~(, trust company,)~~) or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in RCW 25.15.005(1) and 25.15.070, and a limited liability company agreement as that term is used in RCW 25.15.005(5);

(b) "Board of directors" includes one or more persons who have, with respect to a bank(~~(, trust company,)~~) or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in RCW 25.15.005(5);

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

(i) A manager;

(ii) A director; or

(iii) Other person who has, with respect to the bank(~~(, trust company,)~~) or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under RCW 25.15.215;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in RCW 25.15.085(1);

(h) "Officer" includes any of the following of a bank(~~(, trust company,)~~) or holding company:

(i) An officer; or

(ii) Other person who has, with respect to the bank(~~(, trust company,)~~) or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a bank(~~(, trust company,)~~) or holding company, including a member as defined in RCW 25.15.005(8) and 25.15.115.

**Sec. 153.** RCW 30.08.030 and 1994 c 92 s 44 are each amended to read as follows:

When the notice of intention to organize and proposed articles of incorporation complying with the foregoing requirements have been received by the director, together with the fees required by law, the director shall ascertain from the best source of information at his or her command and by such investigation as he or she may deem necessary, whether the character, responsibility and general fitness of the persons named in such articles are such as to command confidence and warrant belief that the business of the proposed bank (~~((or trust company))~~) will be honestly and efficiently conducted in accordance with the intent and purpose of this title, whether the resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed bank and whether the proposed bank (~~((or trust company))~~) is being formed for other than the legitimate objects covered by this title.

**Sec. 154.** RCW 30.08.055 and 1994 c 256 s 53 are each amended to read as follows:

A bank (~~((or trust company))~~) amending its articles of incorporation shall deliver articles of amendment to the director for filing as required for articles of incorporation. The articles of amendment shall set forth:

- (1) The name of the bank (~~((or trust company))~~);
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If the amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and
- (5) If shareholder action was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 30.08.090 (as recodified by this act).

**Sec. 155.** RCW 30.08.060 and 1994 c 92 s 47 are each amended to read as follows:

Before any bank (~~((or trust company))~~) shall be authorized to do business, and within ninety days after approval of the articles of incorporation or such other time as the director may allow, it shall furnish proof satisfactory to the director that such corporation has a paid-in capital in the amount determined by the director, that the requisite surplus or reserve fund has been accumulated or paid in cash, and that it has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If so satisfied, and within thirty days after receipt of such proof, the director shall issue under his or her hand and official seal, in triplicate, a certificate of authority for such corporation. The certificate shall state that the corporation therein named has complied with the requirements of law, that it is authorized to transact the business of a bank (~~((or trust company, or both, as the case may be))~~): PROVIDED, HOWEVER, That the director may make his or her issuance of the certificate to a bank (~~((or trust company))~~) authorized to accept deposits, conditional upon the granting of deposit insurance by the federal deposit insurance corporation, and in such event, shall set out such condition in a written notice which shall be delivered to the corporation.

One of the triplicate certificates shall be transmitted by the director to the corporation and one of the other two shall be filed by the director in the office of the secretary of state and shall be attached to the articles of incorporation: PROVIDED, HOWEVER, That if the issuance of the certificate is made conditional upon the granting of deposit insurance by the federal deposit insurance corporation, the director shall not transmit or file the certificate until such condition is satisfied.

**Sec. 156.** RCW 30.08.070 and 1994 c 92 s 48 are each amended to read as follows:

Every corporation heretofore or hereafter authorized by the laws of this state to do business as a bank (~~(or trust company)~~), which corporation shall have failed to organize and commence business within six months after certificate of authority to commence business has been issued by the director, shall forfeit its rights and privileges as such corporation, which fact the director shall certify to the secretary of state, and such certificate of forfeiture shall be filed and recorded in the office of the secretary of state in the same manner as the certificate of authority: PROVIDED, That the director may, upon showing of cause satisfactory to him or her, issue an order under his or her hand and seal extending for not more than three months the time within which such organization may be effected and business commenced, such order to be transmitted to the office of the secretary of state and filed and recorded therein.

**Sec. 157.** RCW 30.08.080 and 1999 c 14 s 12 are each amended to read as follows:

At any time not less than one year prior to the expiration of the time of the existence of any bank (~~(or trust company)~~), it may by written application to the director, signed and verified by a majority of its directors and approved in writing by the owners of not less than two-thirds of its capital stock, apply to the director for leave to file amended articles of incorporation, extending its time of existence. Prior to acting upon such application, the director shall make such investigation of the applicant as he or she deems necessary. If the director determines that the applicant is in sound condition, that it is conducting its business in a safe manner and in compliance with law and that no reason exists why it should not be permitted to continue, he or she shall issue to the applicant a certificate authorizing it to file amended articles of incorporation extending the time of its existence until such time as it be dissolved by the act of its shareholders owning not less than two-thirds of its stock, or until its certificate of authority becomes revoked or forfeited by reason of violation of law, or until its affairs be taken over by the director for legal cause and finally wound up by him or her. Otherwise the director shall notify the applicant that he or she refuses to grant such certificate. The applicant may appeal from such refusal in the same manner as in the case of a refusal to grant an original certificate of authority. Otherwise the determination of the director shall be conclusive.

Upon receiving a certificate, as hereinabove provided, the applicant may file amended articles of incorporation, extending the time of its existence for the term authorized, to which shall be attached a copy of the certificate of the director. Such articles shall be filed in the same manner and upon payment of the same fees as for original articles of incorporation.



Should any bank (~~(or trust company)~~) fail to continue its existence in the manner herein provided and be not previously dissolved, the director shall at the end of its original term of existence immediately take possession thereof and wind up the same in the same manner as in the case of insolvency.

**Sec. 158.** RCW 30.08.081 and 1994 c 256 s 52 are each amended to read as follows:

(1) Shares of a bank (~~(or trust company)~~) may, but need not be, represented by certificates. Unless this title expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates. At a minimum, each share certificate must state the information required to be stated and must be signed as provided in RCW 23B.06.250 and/or 23B.06.270 for corporations.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a bank (~~(or trust company)~~) may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the bank (~~(or trust company)~~).

(3) Within a reasonable time after the issue or transfer of shares without certificates, the bank (~~(or trust company)~~) shall send the shareholder a written statement of the information required to be stated on certificates under subsection (1) of this section.

**Sec. 159.** RCW 30.08.082 and 1994 c 256 s 44 and 1994 c 92 s 50 are each reenacted and amended to read as follows:

(1) Notwithstanding any other provisions of law and if so authorized by its articles of incorporation or amendments thereto made in the manner provided in the case of a capital increase, any bank (~~(or trust company)~~) may, pursuant to action taken by its board of directors from time to time with the approval of the director, issue shares of preferred or special classes of stock with the attributes and in such amounts and with such par value, if any, as shall be determined by the board of directors from time to time with the approval of the director. No increase of preferred stock shall be valid until the amount thereof shall have been subscribed and actually paid in.

(2) If provided in its articles of incorporation, a bank (~~(or trust company)~~) may issue shares of preferred or special classes having any one or several of the following provisions:

(a) Subjecting the shares to the right of the bank (~~(or trust company)~~) to repurchase or retire any such shares at the price fixed by the articles of incorporation for the repurchase or retirement thereof;

(b) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) Having preference over any other class or classes of shares as to the payment of dividends;

(d) Having preference in the assets of the bank (~~(or trust company)~~) over any other class or classes of shares upon the voluntary or involuntary liquidation of the bank (~~(or trust company)~~);

(e) Having voting or nonvoting rights; and

(f) Being convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

**Sec. 160.** RCW 30.08.084 and 1994 c 92 s 52 are each amended to read as follows:

Notwithstanding any other provisions of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of shares of preferred or special classes of stock shall be entitled to receive such dividends on the purchase price received by the bank (~~(or trust company)~~) for such stock as may be provided by the articles of incorporation or by the board of directors of the bank (~~(or trust company)~~) with the approval of the director.

No dividends shall be declared or paid on common stock until cumulative dividends, if any, on the shares of preferred or special classes of stock shall have been paid in full; and, if the director takes possession of a bank (~~(or trust company)~~) for purposes of liquidation, no payments shall be made to the holders of the common stock until the holders of the shares of preferred or special classes of stock shall have been paid in full such amount as may be provided under the terms of said shares plus all accumulated dividends, if any.

**Sec. 161.** RCW 30.08.086 and 1986 c 279 s 25 are each amended to read as follows:

If any part of the capital of a bank (~~(and trust company)~~) consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based on the value of its stock as established at the time it was issued, or its par value, if any, even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the originally established value or the par value of such preferred stock.

**Sec. 162.** RCW 30.08.087 and 1994 c 256 s 45 are each amended to read as follows:

Any bank (~~(or trust company)~~) may provide in its articles of incorporation or amendments thereto for authorized but unissued shares of its capital stock. The shares may be issued for such consideration as shall be established by the board from time to time and all consideration received therefor shall be allocated to the capital stock or surplus of the corporation.

**Sec. 163.** RCW 30.08.090 and 1994 c 256 s 47 and 1994 c 92 s 54 are each reenacted and amended to read as follows:

Unless the articles of incorporation provide otherwise, the board of directors of a bank (~~(or trust company)~~) may, by majority vote, amend the bank's (~~(or trust company's)~~) articles of incorporation without shareholder action as follows:

(1) If the bank (~~(or trust company)~~) has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the name and address of the initial directors;

(3) If the bank (~~(or trust company)~~) has only one class of shares outstanding, solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the bank's (~~(or trust company's)~~) own shares, or solely to do so and to change the number of authorized shares in proportion thereto;

(4) To change the bank's (~~(or trust company's)~~) name; or

(5) To make any other change expressly permitted by this title to be made without shareholder action.

Other amendments to a bank's ~~((or trust company's))~~ articles of incorporation, in a manner not inconsistent with the provisions of this title, require the affirmative vote of the stockholders representing two-thirds of each class of shares entitled to vote under the terms of the shares at a regular meeting, or special meeting duly called for that purpose in the manner prescribed by the bank's ~~((or trust company's))~~ bylaws. No amendment shall be made whereby a bank becomes a trust company unless such bank first receives permission from the director.

**Sec. 164.** RCW 30.08.092 and 1994 c 256 s 48 and 1994 c 92 s 55 are each reenacted and amended to read as follows:

A bank ~~((or trust company))~~ may increase or decrease its capital stock by amendment to its articles of incorporation. No issuance of capital stock shall be valid, until the amount thereof shall have been actually paid in. No reduction of the capital stock shall be made to an amount less than is required for capital by the director.

**Sec. 165.** RCW 30.08.140 and 2013 c 76 s 9 are each amended to read as follows:

Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To adopt and use a corporate seal;
- (2) To have perpetual succession;
- (3) To make contracts;
- (4) To sue and be sued, the same as a natural person;

(5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation;

(6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs;

(7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director;

(8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange;

(9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property;

(10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located;

(11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus;

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director;

(13) To have and exercise all powers necessary or convenient to effect its purposes;

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank (~~(or trust company)~~) or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank (~~(or trust company)~~) shall accept no investment responsibilities over the account unless it is granted trust powers by the director;

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank.

**Sec. 166.** RCW 30.08.140 and 2013 c 76 s 10 are each amended to read as follows:

Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

(1) To adopt and use a corporate seal;

(2) To have perpetual succession;

(3) To make contracts;

(4) To sue and be sued, the same as a natural person;

(5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation;

(6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs;

(7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director;

(8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange;

(9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property;

(10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located;

(11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or

securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus;

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director;

(13) To have and exercise all powers necessary or convenient to effect its purposes;

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank (~~or trust company~~) or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank (~~or trust company~~) shall accept no investment responsibilities over the account unless it is granted trust powers by the director;

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank;

(16) To conduct a promotional contest of chance as authorized in RCW 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and 30.22.260 (as recodified by this act) are complied with to the satisfaction of the director.

**Sec. 167.** RCW 30.08.150 and 2011 c 336 s 746 are each amended to read as follows:

(1) Upon the issuance of a certificate of authority to a ~~((trust company))~~ bank, the persons named in the articles of incorporation and their successors shall ~~((thereupon become a corporation and shall))~~ have the power(~~(:~~

~~(1) To execute all the powers and possess all the privileges conferred on banks.~~

~~(2) To act as fiscal or transfer agent of the United States or of any state, municipality, body politic, or corporation and in such capacity to receive and disburse money.~~

~~(3) To transfer, register, and countersign certificates of stock, bonds, or other evidences of indebtedness and to act as attorney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise.~~

~~(4) To act as trustee under any mortgage, or bonds, issued by any municipality, body politic, or corporation, foreign or domestic, or by any individual, firm, association, or partnership, and to accept and execute any municipal or corporate trust.~~

~~(5) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between such corporation and those dealing with it.~~

~~(6) To collect coupons on or interest upon all manner of securities, when authorized so to do, by the parties depositing the same.~~

~~(7) To accept trusts from and execute trusts for married persons in respect to their separate property and to be their agent in the management of such property and to transact any business in relation thereto.~~

~~(8) To act as receiver or trustee of the estate of any person, or to be appointed to any trust by any court, to act as assignee under any assignment for the benefit of creditors of any debtor, whether made pursuant to statute or otherwise, and to be the depository of any moneys paid into court.~~

~~(9) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of lunatics, idiots, persons of unsound mind, minors and habitual drunkards: PROVIDED, HOWEVER, That the power hereby granted to trust companies to act as guardian or administrator, with or without the will annexed, shall not be construed to deprive parties of the prior right to have issued to them letters of guardianship, or of administration, as such right now exists under the law of this state.~~

~~(10) To execute any trust or power of whatever nature or description that may be conferred upon or entrusted or committed to it by any person or by any court or municipality, foreign or domestic corporation, and any other trust or power conferred upon or entrusted or committed to it by grant, assignment, transfer, devise, bequest, or by any other authority and to receive, take, use, manage, hold, and dispose of, according to the terms of such trusts or powers any property or estate, real or personal, which may be the subject of any such trust or power.~~

~~(11) Generally to execute trusts of every description not inconsistent with law.~~

~~(12) To purchase, invest in, and sell promissory notes, bills of exchange, bonds, debentures, and mortgages and when moneys are borrowed or received for investment, the bonds or obligations of the company may be given therefor, but no trust company hereafter organized shall issue such bonds: PROVIDED, That no trust company which receives money for investment and issues the bonds of the company therefor shall engage in the business of banking or receiving of either savings or commercial deposits: AND PROVIDED, That it shall not issue any bond covering a period of more than ten years between the date of its issuance and its maturity date: AND PROVIDED FURTHER, That if for any cause, the holder of any such bond upon which one or more annual rate installments have been paid, shall fail to pay the subsequent annual rate installments provided in said bond such holder shall, on or before the maturity date of said bond, be paid not less than the full sum which he or she has paid in on account of said bond)) to engage in trust business and other business the same as a state trust company as set forth in section 329(1) (b) through (q) of this act.~~

(2) Notwithstanding the powers of a trust business set forth in section 329(1) (b) through (k) of this act and as the director may designate by rule pursuant to section 329(1)(q) of this act, a bank shall notify the director prior to commencing trust business, and comply with additional preconditions as may be required by the board of governors of the federal reserve system, the federal deposit insurance corporation, or by rule adopted by the director.

(3) A bank under this title is deemed to be a trust company for purposes of authorization to be a personal representative under RCW 11.36.010.

**Sec. 168.** RCW 30.08.180 and 1995 c 344 s 3 are each amended to read as follows:

Every bank (~~and trust company~~) shall make at least three regular reports each year to the director, as of the dates which he or she shall designate, according to form prescribed by him or her, verified by the president, manager or cashier and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of such corporation. The dates designated by the director shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations.

Every such corporation shall also make such special reports as the director shall call for.

**Sec. 169.** RCW 30.08.190 and 1995 c 344 s 4 and 1995 c 134 s 6 are each reenacted and amended to read as follows:

(1) Every regular report shall be filed with the director within thirty days from the date of issuance of the notice. Every special report shall be filed with the director within such time as shall be specified by him or her in the notice therefor.

(2) The director shall provide a copy of any regular report free of charge to any person that submits a written request for the report.

(3) Every bank (~~and trust company~~) which fails to file any report, required to be filed under subsection (1) of this section and within the time specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil



action for the recovery of any such penalty may be brought by the attorney general in the name of the state.

**Sec. 170.** RCW 30.12.010 and 1994 c 256 s 54 and 1994 c 92 s 62 are each reenacted and amended to read as follows:

Every bank (~~and trust company~~) shall be managed by not less than five directors, who need not be residents of this state. Directors shall be elected by the stockholders and hold office for such term as is specified in the articles of incorporation, not exceeding three years, and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the bank's (~~or trust company's~~) bylaws. Shareholders may not cumulate their votes unless the articles of incorporation specifically so provide. If for any cause no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. The directors shall meet at least once each quarter and whenever required by the director. A majority of the then serving board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

Each director, so far as the duty devolves upon him or her, shall diligently and honestly administer the affairs of such corporation and shall not knowingly violate or willingly permit to be violated any provision of law applicable to such corporation. Vacancies in the board of directors shall be filled by the board.

**Sec. 171.** RCW 30.12.020 and 1994 c 256 s 55 are each amended to read as follows:

All meetings of the stockholders of any bank (~~or trust company~~), except organization meetings and meetings held with the consent of all stockholders, must be held in the county in which the head office or any branch of the corporation is located. Meetings of the directors of any bank (~~or trust company~~) may be held either within or without this state. Every such corporation shall keep records in which shall be recorded the names and residences of the stockholders thereof, the number of shares held by each, and also the transfers of stock, showing the time when made, the number of shares and by whom transferred. In all actions, suits and proceedings, said records shall be prima facie proof of the facts shown therein. All of the corporate books, including the certificate book, stockholders' ledger and minute book or a copy thereof shall be kept at the corporation's principal place of business. Any books, record, and minutes may be in written form or any other form capable of being converted to written form within a reasonable time.

**Sec. 172.** RCW 30.12.025 and 1986 c 279 s 32 are each amended to read as follows:

Any person who has been a shareholder of record at least six months immediately preceding his or her demand or who is the holder of record of at least five percent of all the outstanding shares of a bank (~~or trust company~~), upon written demand stating the purpose thereof, has the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper

purpose, the bank's (~~or trust company's~~) minutes of the proceedings of its shareholders, its shareholder records, and its existing publicly available records. The person is entitled to make extracts therefrom, except that the person is not entitled to view or make extracts of any portion of minutes that refer or relate to information which is confidential.

Any officer or agent who, or a bank (~~or trust company~~) that, refuses to allow any such shareholder or his or her agent or attorney, to examine and make extracts from its minutes of the proceedings of its shareholders, record of shareholders, or existing publicly available books and records, for any proper purpose, shall be liable to the shareholder for actual damages or other remedy afforded the shareholder by law.

It is a defense to any action for penalties under this section that the person suing therefor has, within two years: (1) Sold or offered for sale any list of shareholders for shares of such bank (~~or trust company~~) or any other bank (~~or trust company~~); (2) aided or abetted any person in procuring any list of shareholders for any such purpose; (3) improperly used any information secured through any prior examination of existing publicly available books and records, or minutes, or record of shareholders of such bank (~~or trust company~~) or any other bank (~~or trust company~~); or (4) not acted in good faith or for a proper purpose in making his or her demand.

Nothing in this section impairs the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which the shareholder has been a shareholder of record, and irrespective of the number of shares held by him or her, to compel the production for examination by the shareholder of the existing publicly available books and records, minutes, and record of shareholders of a bank (~~or trust company~~).

Upon the written request of any shareholder of a bank (~~or trust company~~), the bank (~~or trust company~~) shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations. As used in this section, "shareholder" includes the holder of voting trust certificates for shares.

**Sec. 173.** RCW 30.12.030 and 1994 c 92 s 63 are each amended to read as follows:

(1) Except as otherwise permitted by the director under specified terms and conditions, the board of directors of each bank (~~and trust company~~) shall direct and require good and sufficient surety company fidelity bonds issued by a company authorized to engage in the insurance business in the state of Washington on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank (~~or trust company~~), on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be individual, schedule or blanket form, and the premiums therefor shall be paid by the bank (~~or trust company~~).

(2) The said directors shall also direct and require suitable insurance protection to the bank (~~or trust company~~) against burglary, robbery, theft and other similar insurance hazards to which the bank (~~or trust company~~) may be exposed in the operations of its business on the premises or elsewhere.

The said directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors.

**Sec. 174.** RCW 30.12.040 and 2010 c 88 s 20 are each amended to read as follows:

(1) The director may issue and serve a board director, officer, or employee of a bank (~~(or trust company)~~) with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the bank (~~(or trust company)~~) or any other depository institution, (~~(trust company)~~) bank holding company, thrift holding company, or financial holding company doing business in this state whenever, in the opinion of the director:

(a) Reasonable cause exists to believe the person has committed a material violation of law, an unsafe and unsound practice, or a violation or practice involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and

(b) The bank(~~(, trust company)~~) or holding company has suffered or is likely to suffer substantial financial loss or other damage; or

(c) The interests of depositors or trust beneficiaries could be seriously prejudiced by reason of the violation or practice.

(2) The director may issue and serve a board director, officer, or employee of a holding company with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the holding company, its subsidiary bank (~~(or trust company)~~), or any other depository institution, (~~(trust company)~~) bank holding company, thrift holding company, or financial holding company doing business in this state whenever, in the opinion of the director:

(a) Reasonable cause exists to believe the person has committed a material violation of law, an unsafe and unsound practice, or a violation or practice involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and

(b) The subsidiary bank (~~(or trust company)~~) has suffered or is likely to suffer substantial financial loss or other damage; or

(c) The interests of depositors (~~(or trust beneficiaries)~~) of the subsidiary bank (~~(or trust company)~~) could be seriously prejudiced by reason of the violation or practice.

**Sec. 175.** RCW 30.12.0401 and 2010 c 88 s 21 are each amended to read as follows:

The director may serve written notice of charges under RCW 30.12.040 (as recodified by this act) to suspend a person from further participation in any manner in the conduct of the affairs of a bank(~~(, trust company)~~) or holding company, if the director determines that such an action is necessary for the protection of the bank (~~(or trust company)~~), or the interests of the depositors (~~(or trust beneficiaries)~~) of the bank (~~(or trust company)~~). Any suspension notice issued by the director is effective upon service, and unless the superior court of

the county of its principal place of business issues a stay of the order, remains in effect and enforceable until:

- (1) The director dismisses the charges contained in the notice served to the person; or
- (2) The effective date of a final order for removal of the person under RCW 30.12.040 (as recodified by this act).

**Sec. 176.** RCW 30.12.042 and 2010 c 88 s 22 are each amended to read as follows:

(1) A notice of an intention to remove a director, officer, or employee from office or to prohibit his or her participation in the conduct of the affairs of a bank(~~(-trust company,))~~) or holding company shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days or later than thirty days after the date of service of the notice unless an earlier or later date is set by the director at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

(2) Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established, the director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank(~~(-trust company,))~~) or holding company as the director may consider appropriate.

(3) Any order shall become effective at the expiration of ten days after service upon the bank(~~(-trust company,))~~) or holding company and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

(4) An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the director or a reviewing court.

**Sec. 177.** RCW 30.12.044 and 2010 c 88 s 23 are each amended to read as follows:

If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of a bank(~~(-trust company,))~~) or holding company less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of a bank(~~(-trust company,))~~) or holding company are removed under this chapter, the director shall appoint persons to serve temporarily as directors until such time as their respective successors take office.

**Sec. 178.** RCW 30.12.047 and 2010 c 88 s 24 are each amended to read as follows:

Any present or former director, officer, or employee of a bank(~~(-trust company,))~~) or holding company, or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of the bank(~~(-trust company,))~~) or holding company involved; or who directly or indirectly solicits or procures,

transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the bank(~~(, trust company,)~~) or holding company; or who, without the prior approval of the director, votes for a director or serves or acts as a director, officer, employee, or agent of any bank(~~(, trust company,)~~) or holding company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW, as now or hereafter amended.

**Sec. 179.** RCW 30.12.060 and 1994 c 92 s 69 are each amended to read as follows:

(1) Any bank (~~(or trust company)~~) shall be permitted to make loans to any employee of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any employee to any other person, to the same extent as if the employee were in no way connected with the corporation. Any bank (~~(or trust company)~~) shall be permitted to make loans to any officer of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any officer to any other person: PROVIDED, That the total value of the loans made and obligation acquired for any one officer shall not exceed such amount as shall be prescribed by the director pursuant to regulations adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended: AND PROVIDED FURTHER, That no such loan shall be made, or obligation acquired, in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, unless a resolution authorizing the same shall be adopted by a vote of a majority of the board of directors of such corporation prior to the making of such loan or discount, and such vote and resolution shall be entered in the corporate minutes. In no event shall the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors. No loan in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, shall be made by any bank (~~(or trust company)~~) to any director of such corporation nor shall the note or obligation in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, of such director be discounted by any such corporation, or by any officer or employee thereof in its behalf, unless a resolution authorizing the same shall be adopted by a vote of a majority of the entire board of directors of such corporation exclusive of the vote of such interested director, and such vote and resolution shall be entered in the corporate minutes. In no event may the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors.

Each bank (~~(or trust company)~~) shall at such times and in such form as may be required by the director, report to the director all outstanding loans to directors of such bank (~~(or trust company)~~).

The amount of any endorsement or agreement of suretyship or guaranty of any such director to the corporation shall be construed to be a loan within the provisions of this section. Any modification of the terms of an existing obligation (excepting only such modifications as merely extend or renew the indebtedness) shall be construed to be a loan within the meaning of this section.

(2) "Unimpaired surplus," as used in this section, consists of the sum of the following amounts:

- (a) Fifty percent of the reserve for possible loan losses;
- (b) Subordinated notes and debentures;
- (c) Surplus;
- (d) Undivided profits; and
- (e) Reserve for contingencies and other capital reserves, excluding accrued dividends on preferred stock.

**Sec. 180.** RCW 30.12.070 and 2010 c 88 s 25 are each amended to read as follows:

The director may at any time, if in his or her judgment excessive, unsafe, or imprudent loans are being made or are likely to be made by a bank (~~(or trust company)~~) to any of its directors or officers or the directors or officers of its holding company, or to any corporation, copartnership or association of which such director is a stockholder, member, co-owner, or in which such director is financially interested, or like discounts of the notes or obligations of any such director, corporation, copartnership or association are being made or are likely to be made, require such bank (~~(or trust company)~~) to submit to him or her for approval all proposed loans to, or discounts of the note or obligation of, any such director, officer, corporation, copartnership or association, and thereafter such proposed loans and discounts shall be reported upon such forms and with such information concerning the desirability and safety of such loans or discounts and of the responsibility and financial condition of the person, corporation, copartnership or association to whom such loan is to be made or whose note or obligation is to be discounted and of the amount and value of any collateral that may be offered as security therefor, as the director may require, and no such loan or discount shall be made without his or her written approval thereon.

**Sec. 181.** RCW 30.12.090 and 2010 c 88 s 26 are each amended to read as follows:

Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank(~~(, trust company,)~~) or holding company, or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank(~~([, trust company,)~~) or holding company, or shall make, state, or publish any false statement of the amount of the assets or liabilities of any bank(~~(, trust company,)~~) or holding company, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

**Sec. 182.** RCW 30.12.100 and 2010 c 88 s 27 are each amended to read as follows:

Every officer, director, or employee or agent of any bank(~~(, trust company,)~~) or holding company who, for the purpose of concealing any fact or suppressing any evidence against himself or herself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank(~~(, trust company,)~~) or holding company, or of the director, or of anyone connected with his or her office, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

**Sec. 183.** RCW 30.12.110 and 1986 c 279 s 35 are each amended to read as follows:

No officer, director, agent, employee or stockholder of any bank (~~(or trust company)~~) shall, directly or indirectly, receive a bonus, commission, compensation, remuneration, gift, speculative interest or gratuity of any kind from any person, firm or corporation other than the bank or as allowed by RCW 30.12.115 (as recodified by this act) for granting, procuring or endeavoring to procure, for any person, firm or corporation, any loan by or out of the funds of such bank (~~(or trust company)~~) or the purchase or sale of any securities or property for or on account of such bank (~~(or trust company)~~) or for granting or procuring permission for any person, firm or corporation to overdraw any account with such bank (~~(or trust company)~~). Any person violating this section shall be guilty of a gross misdemeanor.

**Sec. 184.** RCW 30.12.180 and 1994 c 92 s 72 are each amended to read as follows:

Whenever the director shall notify the board of directors of a bank (~~(or trust company)~~) to levy an assessment upon the stock of such corporation and the holders of two-thirds of the stock shall consent thereto, such board shall, within ten days from the issuance of such notice, adopt a resolution for the levy of such assessment, and shall immediately upon the adoption of such resolution serve notice upon each stockholder, personally or by mail, at his or her last known address, to pay such assessment; and that if the same be not paid within twenty days from the date of the issuance of such notice, his or her stock will be subject to sale and all amounts previously paid thereon shall be subject to forfeiture. If any stockholder fail within said twenty days to pay the assessment as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder to be sold to make good the deficiency. The sale shall be held at such time and place as shall be designated by the board of directors and shall be either public or private, as the board shall deem best. At any time after the expiration of sixty days from the expiration of said twenty-day period the director may require any stock upon which the assessment remains unpaid to be canceled and deducted from the capital of the corporation. If such cancellation shall reduce the capital of the corporation below the minimum required by this title or its articles of incorporation the capital shall, within thirty days thereafter be increased to the required amount by original subscription, in default of which the director may take possession of such corporation in the manner provided by law in case of insolvency.

**Sec. 185.** RCW 30.12.190 and 2010 c 88 s 28 are each amended to read as follows:

(1) Every person who shall knowingly violate, or knowingly aid or abet the violation of any provision of RCW 30.04.010, 30.04.030, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.120, 30.04.130, 30.04.180, 30.04.210, 30.04.220, 30.04.280, 30.04.300, 30.08.010, 30.08.020, 30.08.030, 30.08.040, 30.08.050, 30.08.060, 30.08.080, 30.08.090, (~~(30.08.095,)~~) 30.08.140, 30.08.150, 30.08.160, 30.08.180, 30.08.190, 30.12.010, 30.12.020, 30.12.030, 30.12.060, 30.12.070, 30.12.130, 30.12.180, 30.12.190, 30.16.010, 30.20.060, 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.060, 30.44.070, 30.44.080, 30.44.090, 30.44.100, 30.44.130, 30.44.140, 30.44.150, 30.44.160,

30.44.170, 30.44.240, 30.44.250 (as recodified by this act), 43.320.060, 43.320.070, 43.320.080, and 43.320.100, and any director, officer, or employee of a bank (~~(-trust company-)~~) or holding company who fails to perform any act which it is therein made his or her duty to perform, shall be guilty of a misdemeanor.

(2) A director, officer, or employee of a bank (~~(-trust company-)~~) or holding company who has been convicted for the violation of the banking laws of this or any other state or of the United States shall not be permitted to engage in or become or remain a board director, officer, or employee of any bank, trust company, or holding company organized and existing under the laws of this state, or of any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in this state.

**Sec. 186.** RCW 30.12.205 and 1986 c 279 s 37 are each amended to read as follows:

Subject to any restrictions in its articles of incorporation and in accordance with and subject to the provisions of RCW 30.08.088 (as recodified by this act), the board of directors of a bank (~~(or trust company)~~) may grant options entitling the holders thereof to purchase from the corporation shares of any class of its stock. The instrument evidencing the option shall state the terms upon which, the time within which, and the price at which such shares may be purchased from the corporation upon the exercise of such option. If any such options are granted by contract, or are to be granted pursuant to a plan, to officers or employees of the bank (~~(or trust company)~~), then the contract or the plan shall require the approval, within twelve months of its approval by the board of directors, of the holders of a majority of its voting capital stock. Subsequent amendments to any such contract or plan which do not change the price or duration of any option, the maximum number of shares which may be subject to options, or the class of employees eligible for options may be made by the board of directors without further shareholder approval.

Subject to any restrictions in its articles of incorporation, the board of directors of a bank (~~(or trust company)~~) shall have the authority to enter into any plans or contracts providing for compensation for its officers and employees, including, but not being limited to, incentive bonus contracts, stock purchase or bonus plans and profit sharing plans.

**Sec. 187.** RCW 30.12.220 and 1979 c 106 s 8 are each amended to read as follows:

The articles of incorporation of any bank (~~(or trust company)~~) organized under this title may limit or permit the preemptive rights of a shareholder to acquire unissued shares of the corporation and may thereafter by amendment limit, deny, or grant to shareholders of any class of stock the preemptive right to acquire additional shares of the corporation whether then or thereafter authorized.

**Sec. 188.** RCW 30.12.240 and 2010 c 88 s 29 are each amended to read as follows:

If the directors of any bank (~~(-trust company-)~~) or holding company shall knowingly violate, or knowingly permit any of the officers, agents, or employees of the bank (~~(or trust company)~~) to violate any of the provisions of this title or



any lawful regulation or directive of the director, and if the directors are aware that such facts and circumstances constitute such violations, then each director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits of the bank (~~(or trust company, or any trust beneficiary of the trust company,)~~) sustains due to the violation.

**Sec. 189.** RCW 30.16.010 and 1955 c 33 s 30.16.010 are each amended to read as follows:

No director, officer, agent or employee of any bank (~~(or trust company)~~) shall certify a check unless the amount thereof actually stands to the credit of the drawer on the books of such corporation and when certified must be charged to the account of the drawer. Every violation of this provision shall be a gross misdemeanor. Any such check so certified by a duly authorized person shall be a good and valid obligation of the bank (~~(or trust company)~~) in the hands of an innocent holder.

**Sec. 190.** RCW 30.20.005 and 1994 c 92 s 74 are each amended to read as follows:

Deposits made by individuals in a national bank, state bank(~~(or trust company,)~~) or other banking institution subject to the supervision of the director are governed by chapter 30.22 RCW (as recodified by this act).

**Sec. 191.** RCW 30.20.025 and 1985 c 305 s 2 are each amended to read as follows:

Each person making a deposit in a bank (~~(or trust company)~~) shall be given a receipt that shall show or in conjunction with the deposit slip can be used to trace the name of the bank (~~(or trust company)~~), the name of the account, the account number, the date, and the amount deposited. If specifically requested by the depositor when making the deposit, the receipt must expressly show the name of the bank (~~(or trust company)~~), the date, the amount deposited, plus either the name of the account or the account number or both the name of the account and the account number.

**Sec. 192.** RCW 30.20.060 and 1996 c 2 s 8 are each amended to read as follows:

A bank (~~(or trust company)~~) shall repay all deposits to the depositor or his or her lawful representative when required at such time or times and with such interest as the regulations of the corporation shall prescribe. These regulations shall be prescribed by the directors of the bank (~~(or trust company)~~) and may contain provisions with respect to the terms and conditions upon which any account or deposit will be maintained by the bank (~~(or trust company)~~). These regulations and any amendments shall be available to depositors on request, and shall be posted in a conspicuous place in the principal office and each branch in this state or, if the regulations and any amendments are not so posted, a description of changes in the regulations after an account is opened shall be mailed to depositors pursuant to 12 U.S.C. Sec. 4305(c) or otherwise. All these rules and regulations and all amendments shall be binding upon all depositors. At the option of the bank, a passbook shall be issued to each savings account depositor, or a record maintained in lieu of a passbook. A deposit contract may be adopted by the bank (~~(or trust company)~~) in lieu of or in addition to account rules and regulations and shall be enforceable and amendable in the same

manner as account rules and regulations or as provided in the deposit contract. A copy of the contract shall be provided to the depositor.

**Sec. 193.** RCW 30.20.090 and 1994 c 92 s 75 are each amended to read as follows:

Notice to any national bank, state bank, (~~(trust company, mutual)~~) savings bank, or bank under the supervision of the director, doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person may be disregarded without liability by said bank (~~(or trust company)~~) unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank (~~(or trust company)~~) from a court of competent jurisdiction in a cause therein instituted by him or her wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to said bank (~~(or trust company)~~), in form and with sureties acceptable to it, a bond, in an amount which is double either the amount of said deposit or said adverse claim, whichever is the lesser, indemnifying said bank (~~(or trust company)~~) from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank (~~(or trust company)~~): PROVIDED, That where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, and also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant, the bank (~~(or trust company)~~) shall without liability refuse to deliver such property for a period of not more than five business days from the date that the bank received the adverse claimant's affidavit, without liability for the sufficiency or truth of the facts alleged in the affidavit, after which time the claim shall be treated as any other claim under this section.

This section shall not apply to accounts subject to chapter 30.22 RCW (as recodified by this act).

**Sec. 194.** RCW 30.22.040 and 2011 c 336 s 747 and 2011 c 303 s 4 are each reenacted and amended to read as follows:

Unless the context of this chapter otherwise requires, the terms contained in this section have the meanings indicated.

(1) "Account" means a contract of deposit between a depositor or depositors and a financial institution; the term includes a checking account, savings account, certificate of deposit, savings certificate, share account, savings bond, and other like arrangements.

(2) "Actual knowledge" means written notice to a manager of a branch of a financial institution, or an officer of the financial institution in the course of his or her employment at the branch, pertaining to funds held on deposit in an account maintained by the branch received within a period of time which affords the financial institution a reasonable opportunity to act upon the knowledge.

(3) "Agency account" means an account to which funds may be deposited and from which payments may be made by an agent designated by a depositor. In the event there is more than one depositor named on an account, each depositor may designate the same or a different agent for the purpose of depositing to or making payments of funds from a depositor's account.

(4) "Agent" means a person designated by a depositor or depositors in a contract of deposit or other document to have the authority to deposit and to make payments from an account in the name of the depositor or depositors.

(5) "Depositor," when utilized in determining the rights of individuals to funds in an account, means an individual who owns the funds. When utilized in determining the rights of a financial institution to make or withhold payment, and/or to take any other action with regard to funds held under a contract of deposit, "depositor" means the individual or individuals who have the current right to payment of funds held under the contract of deposit without regard to the actual rights of ownership thereof by these individuals. A trust or P.O.D. account beneficiary becomes a depositor only when the account becomes payable to the beneficiary by reason of having survived the depositor or depositors named on the account, depending upon the provisions of the contract of deposit.

(6) "Depositor's funds" or "funds of a depositor" means the amount of all deposits belonging to or made for the benefit of a depositor, less all withdrawals of the funds by the depositor or by others for the depositor's benefit, plus the depositor's prorated share of any interest or dividends included in the current balance of the account and any proceeds of deposit life insurance added to the account by reason of the death of a depositor.

(7) "Director" means the director of the department of financial institutions or his or her designee.

(8) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(9) "Individual" means a human being; "person" includes an individual, corporation, partnership, limited partnership, joint venture, trust, or other entity recognized by law to have separate legal powers.

(10) "Joint account with right of survivorship" means an account in the name of two or more depositors and which provides that the funds of a deceased depositor become the property of one or more of the surviving depositors.

(11) "Joint account without right of survivorship" means an account in the name of two or more depositors and which contains no provision that the funds of a deceased depositor become the property of the surviving depositor or depositors.

(12) "Payment(s)" of sums on deposit includes withdrawal, payment by check or other directive of a depositor or his or her agent, any pledge of sums on deposit by a depositor or his or her agent, any set-off or reduction or other disposition of all or part of an account balance, and any payments to any person under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220 (as recodified by this act).

(13) "Promotional contest of chance" means a promotional contest conducted pursuant to RCW 9.46.0356(1)(b).

(14) "Proof of death" means a certified or authenticated copy of a death certificate, or photostatic copy thereof, purporting to be issued by an official or agency of the jurisdiction where the death purportedly occurred, or a certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that a person is dead. In either case, the proofs constitute prima facie proof of the fact, place, date, and time of death, and identity of the decedent and

the status of the dates, circumstances, and places disclosed by the record or report.

(15) "Request" means a request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(16) "Single account" means an account in the name of one depositor only.

(17) "Trust or P.O.D. account beneficiary" means a person or persons, other than a codepositor, who has or have been designated by a depositor or depositors to receive the depositor's funds remaining in an account upon the death of a depositor or all depositors.

(18) "Trust and P.O.D. accounts" means accounts payable on request to a depositor during the depositor's lifetime, and upon the depositor's death to one or more designated beneficiaries, or which are payable to two or more depositors during their lifetimes, and upon the death of all depositors to one or more designated beneficiaries. The term "trust account" does not include deposits by trustees or other fiduciaries where the trust or fiduciary relationship is established other than by a contract of deposit with a financial institution.

(19) "Withdrawal" means payment to a person pursuant to check or other directive of a depositor.

**Sec. 195.** RCW 30.22.041 and 1995 c 186 s 1 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 30.22.240 and 30.22.245 (as recodified by this act).

(1) "Customer" means any person, partnership, limited partnership, corporation, trust, or other legal entity that is transacting or has transacted business with a financial institution, that is using or has used the services of an institution, or for which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means state and national banks and trust companies, state and federal savings banks, state and federal savings and loan associations, and state and federal credit unions.

(3) "Law enforcement officer" means an employee of a public law enforcement agency organized under the authority of a county, city, or town and designated to obtain deposit account information by the chief law enforcement officer of that agency.

**Sec. 196.** RCW 30.22.120 and 1981 c 192 s 12 are each amended to read as follows:

In making payments of funds deposited in an account, a financial institution may rely conclusively and entirely upon the form of the account and the terms of the contract of deposit at the time the payments are made. A financial institution is not required to inquire as to either the source or the ownership of any funds received for deposit to an account, or to the proposed application of any payments made from an account. Unless a financial institution has actual knowledge of the existence of dispute between depositors, beneficiaries, or other

persons claiming an interest in funds deposited in an account, all payments made by a financial institution from an account at the request of any depositor to the account and/or the agent of any depositor to the account in accordance with this section and RCW 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220 (as recodified by this act) shall constitute a complete release and discharge of the financial institution from all claims for the amounts so paid regardless of whether or not the payment is consistent with the actual ownership of the funds deposited in an account by a depositor and/or the actual ownership of the funds as between depositors and/or the beneficiaries of P.O.D. and trust accounts, and/or their heirs, successors, personal representatives, and assigns.

**Sec. 197.** RCW 30.22.130 and 1981 c 192 s 13 are each amended to read as follows:

The protection accorded to financial institutions under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, 30.22.210, and 30.22.220 (as recodified by this act) shall have no bearing on the actual rights of ownership to deposited funds by a depositor, and/or between depositors, and/or by and between beneficiaries of trust and P.O.D. accounts, and their heirs, successors, personal representatives, and assigns.

**Sec. 198.** RCW 30.22.190 and 1989 c 220 s 3 are each amended to read as follows:

In each case, where it is provided in RCW 30.22.180 (as recodified by this act) that a financial institution may make payment of funds deposited in an account to the personal representative of the estate of a deceased depositor or beneficiary, the financial institution may make payment of the funds to the following persons under the circumstances provided:

(1) In those instances where the deceased depositor left a surviving spouse, and the deceased depositor and the surviving spouse shall have executed a community property agreement which by its terms would include funds of the deceased depositor remaining in the account, a financial institution may make payment of all funds in the name of the deceased spouse to the surviving spouse upon receipt of a certified copy of the community property agreement as recorded in the office of a county auditor of the state and an affidavit of the surviving spouse that the community property agreement was validly executed and in full force and effect upon the death of the depositor.

(2) In those instances where the balance of the funds in the name of a deceased depositor does not exceed two thousand five hundred dollars, payment of the decedent's funds remaining in the account may be made to the surviving spouse, next of kin, funeral director, or other creditor who may appear to be entitled thereto upon receipt of proof of death and an affidavit to the effect that no personal representative has been appointed for the deceased depositor's estate. As a condition to the payment, a financial institution may require such waivers, indemnity, receipts, and acquittance and additional proofs as it may consider proper.

(3) In those instances where the person entitled presents an affidavit which meets the requirements of chapter 11.62 RCW.

A person receiving a payment from a financial institution pursuant to subsections (2) and (3) of this section is answerable and accountable therefor to

any personal representative of the deceased depositor's estate wherever and whenever appointed.

**Sec. 199.** RCW 30.22.220 and 1981 c 192 s 22 are each amended to read as follows:

Notwithstanding RCW 30.22.210 (as recodified by this act), a financial institution may, without liability, pay or permit withdrawal of any funds on deposit in an account to a depositor and/or agent of a depositor and/or trust or P.O.D. account beneficiary, and/or other person claiming an interest therein, even when the financial institution has actual knowledge of the existence of the dispute, if the adverse claimant shall execute to the financial institution, in form and with security acceptable to it, a bond in an amount which is double either the amount of the deposit or the adverse claim, whichever is the lesser, indemnifying the financial institution from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of the adverse claim or the dishonor of the check or other order of the person in whose name the deposit stands on the books of the financial institution: PROVIDED, That where the person in whose name the deposit stands is a fiduciary for the adverse claimant, and the facts constituting such relationship, and also the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant, the financial institution shall, without liability, refuse to deliver the property for a period of not more than five business days from the date that the financial institution receives the adverse claimant's affidavit, without liability for the sufficiency or truth of the facts alleged in the affidavit, after which time the claim shall be treated as any other claim under this section.

**Sec. 200.** RCW 30.32.010 and 1955 c 33 s 30.32.010 are each amended to read as follows:

Any bank(~~(-trust company)~~) or mutual savings bank may become a member of the federal reserve system of the United States and to that end may comply with all laws of the United States and all rules, regulations and requirements promulgated pursuant thereto, including the investment of its funds in the stock of a federal reserve bank; and any bank(~~(-trust company)~~) or mutual savings bank, whether a member of the federal reserve system or not, may invest its funds in the stock of the Federal Deposit Insurance Corporation created by the act of congress approved June 16, 1933, and may participate in the insurance of bank deposits and obligate itself for the cost of such participation by assessments or otherwise in accordance with the laws of the United States.

**Sec. 201.** RCW 30.32.020 and 1955 c 33 s 30.32.020 are each amended to read as follows:

Any savings and loan association, building and loan association, bank, (~~(trust company)~~) savings bank, or mutual savings bank may become a member of and invest its funds in the bonds and/or the capital stock of a federal home loan bank, and vote such stock in the manner prescribed by its board of directors.

**Sec. 202.** RCW 30.32.030 and 1955 c 33 s 30.32.030 are each amended to read as follows:

Any such bank, (~~(trust company)~~) insurance company, or association, may borrow from any home loan bank and as security for borrowing may pledge therewith the notes, mortgages, trust deeds which it holds as shall be required by

federal law, and under such rules and regulations as shall be adopted by a federal home loan bank.

**Sec. 203.** RCW 30.32.040 and 1955 c 33 s 30.32.040 are each amended to read as follows:

Any such bank, (~~(trust company)~~) insurance company, or association, may designate a federal home loan bank as a depository for its funds.

**Sec. 204.** RCW 30.36.010 and 1955 c 33 s 30.36.010 are each amended to read as follows:

Capital notes or debentures, where used in this chapter, shall mean notes or other obligations issued by a bank (~~(trust company)~~) or mutual savings bank, for money obtained and used as additional capital or to replace impaired capital stock: PROVIDED, Such notes or other obligations are subordinate to the rights of depositors and other creditors.

The term "capital" where used in this chapter shall mean capital stock and/or capital notes.

**Sec. 205.** RCW 30.36.020 and 1994 c 92 s 76 are each amended to read as follows:

With the approval of the director, any bank (~~(trust company)~~) or mutual savings bank may at any time, through action of its board of directors or trustees, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate to the claims of depositors and other creditors. The holders of capital notes or debentures issued by a bank (~~(or trust company)~~) shall have such conversion rights as may be provided in the articles of incorporation with the approval of the director.

**Sec. 206.** RCW 30.36.030 and 1994 c 92 s 77 are each amended to read as follows:

Where any bank (~~(trust company)~~) or mutual savings bank has issued and has outstanding capital notes or debentures, it may carry its capital stock on its books at a sum less than par, and it shall not be considered impaired so long as the amount of such capital notes or debentures equals or exceeds the impairment as found by the director.

**Sec. 207.** RCW 30.36.040 and 1994 c 92 s 78 are each amended to read as follows:

Before such capital notes or debentures are retired or paid by the bank (~~(trust company)~~) or mutual savings bank, any existing impairment of its capital stock must be overcome or corrected to the satisfaction of the director.

**Sec. 208.** RCW 30.38.010 and 2013 c 76 s 12 are each amended to read as follows:

(1) An out-of-state bank may engage in banking in this state without violating RCW 30.04.280 (as recodified by this act) only if the conditions and filing requirements of this chapter are met and the bank was lawfully engaged in banking in this state on July 22, 2010, or the bank's in-state banking activities:

(a) Resulted from an interstate combination pursuant to RCW 30.49.125 (as recodified by this act) or 32.32.500;

(b) Resulted from a relocation of a head office of a state bank pursuant to 12 U.S.C. Sec. 30 and RCW 30.04.215(3) (as recodified by this act);

(c) Resulted from a relocation of a main office of a national bank pursuant to 12 U.S.C. Sec. 30;

(d) Resulted from the establishment of a branch of a savings bank in compliance with RCW 32.04.030(6); or

(e) Resulted from interstate branching under RCW 30.38.015 (as recodified by this act).

Nothing in this section affects the authorities of alien banks as defined by RCW 30.42.020 (as recodified by this act) to engage in banking within this state.

(2) The director, consistent with 12 U.S.C. Sec. 1831u(b)(2)(D), may approve an interstate combination if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries of those banks or holding companies.

**Sec. 209.** RCW 30.38.030 and 1996 c 2 s 13 are each amended to read as follows:

(1) If authorized to engage in banking in this state under RCW 30.38.010 (as recodified by this act), an out-of-state bank may maintain and operate the branches in Washington of a Washington bank with which the out-of-state bank or its predecessors engaged in an interstate combination.

(2) The out-of-state bank may establish or acquire and operate additional branches in Washington to the same extent that any Washington bank may establish or acquire and operate a branch in Washington under applicable federal and state law.

(3) The out-of-state state bank may, at such branches, unless otherwise limited by the bank's home state law, exercise any powers and authorities that are authorized under the laws of this state for Washington state banks.

(4) The out-of-state state bank may, at these branches, exercise additional powers and authorities that are authorized under the laws of its home state, only if the director determines in writing that the exercise of the additional powers and authorities in this state will not threaten the safety and soundness of banks in this state and serves the convenience and needs of Washington consumers. Washington state banks also may exercise the powers and authorities under RCW 30.08.140(16) (as recodified by this act) or 32.08.140(15).

**Sec. 210.** RCW 30.38.070 and 1996 c 2 s 17 are each amended to read as follows:

(1) Any out-of-state state bank that will be the resulting bank pursuant to an interstate combination involving any bank with branches in Washington, if RCW 30.49.125(5) (as recodified by this act) does not apply, shall notify the director of the proposed combination not later than three days after the date of filing of an application for the combination with the responsible federal bank supervisory agency, and shall submit a copy of the application to the director and pay applicable application fees, if any, required by the director. In lieu of notice from the out-of-state state bank the director may accept notice from the bank's home state regulator. The director has the authority to waive any procedures required by Washington merger laws if the director finds that the provision is in conflict with the applicable federal law or in conflict with the applicable law of the state of the resulting bank.

(2) An out-of-state state bank that has established and maintains a branch in this state pursuant to this chapter shall give at least thirty days' prior written



notice or, in the case of an emergency transaction, shorter notice as is consistent with the applicable state or federal law, to the director of any transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal change in bank control act of 1978, as amended, 12 U.S.C. Sec. 1817(j), or the federal bank holding company act of 1956, as amended, 12 U.S.C. Sec. 1841 et seq., or any successor statutes. In lieu of notice from the out-of-state state bank the director may accept notice from the bank's home state regulator.

**Sec. 211.** RCW 30.42.020 and 1994 c 92 s 80 are each amended to read as follows:

For the purposes of this chapter, the following terms shall be defined as follows:

(1) "Alien bank" means a bank organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

(2) "Office" means a branch or agency of an alien bank carrying on business in this state pursuant to this chapter.

(3) "Branch" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.105, 30.42.115, and 30.42.155 (as recodified by this act).

(4) "Agency" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.180 (as recodified by this act).

(5) "Bureau" means an alien bank's operation in this state exercising the powers authorized by RCW 30.42.230 (as recodified by this act).

**Sec. 212.** RCW 30.42.060 and 1994 c 92 s 82 are each amended to read as follows:

An alien bank shall not hereafter open an office in this state until it has met the following conditions:

(1) It has filed with the director an application in such form and containing such information as shall be prescribed by the director.

(2) It has designated the director by a duly executed instrument in writing, its agent, upon whom process in any action or proceeding arising out of a transaction with the Washington office may be served. Such service shall have the same force and effect as if the alien bank were a Washington corporation and had been lawfully served with process within the state. The director shall forward by mail, postage prepaid, a copy of every process served upon him or her under the provisions of this subdivision, addressed to the manager or agent of such bank at its office in this state.

(3) It has allocated and assigned to its office within this state paid-in capital of not less than two hundred thousand dollars or such larger amounts as the director in his or her discretion may require.

(4) It has filed with the director a letter from its chief executive officer guaranteeing that the alien bank's entire capital and surplus is and shall be available for all liabilities and obligations of its office doing business in this state.

(5) It has paid the fees required by law and established by the director pursuant to RCW (~~30.08.095~~) 30.04.070 (as recodified by this act).

(6) It has received from the director his or her certificate authorizing the transaction of business in conformity with this chapter.

**Sec. 213.** RCW 30.42.070 and 1994 c 92 s 83 are each amended to read as follows:

The capital allocated as required in RCW 30.42.060(3) (as recodified by this act) shall be maintained within this state at all times in cash or in director approved interest bearing bonds, notes, debentures, or other obligations: (1) Of the United States or of any agency or instrumentality thereof, or guaranteed by the United States; or (2) of this state, or of a city, county, town, or other municipal corporation, or instrumentality of this state or guaranteed by this state, or such other assets as the director may approve. Such capital shall be deposited with a bank qualified to do business in and having its principal place of business within this state, or in a national bank qualified to engage in banking in this state. Such bank shall issue a written receipt addressed and delivered to the director reciting that such deposit is being held for the sole benefit of the United States domiciled creditors of such alien bank's Washington office and that the same is subject to his or her order without offset for the payment of such creditors. For the purposes of this section, the term "creditor" shall not include any other offices, branches, subsidiaries, or affiliates of such alien bank. Subject to the approval of the director, reasonable arrangements may be made for substitution of securities. So long as it shall continue business in this state in conformance with this chapter and shall remain solvent, such alien bank shall be permitted to collect all interest and/or income from the assets constituting such allocated capital.

Should any securities so depreciate in market value and/or quality as to reduce the deposit below the amount required, additional money or securities shall be deposited promptly in amounts sufficient to meet such requirements. The director may make an investigation of the market value and of the quality of any security deposited at the time such security is presented for deposit or at any time thereafter. The director may make such charge as may be reasonable and proper for such investigation.

**Sec. 214.** RCW 30.42.090 and 1994 c 92 s 85 are each amended to read as follows:

The director may give or withhold his or her approval of an application by an alien bank to establish an office in this state at his or her discretion. The director's decision shall be based on the information submitted to his or her office in the application required by RCW 30.42.060 (as recodified by this act) and such additional investigation as the director deems necessary or appropriate. Prior to granting approval to said application, the director shall have ascertained to his or her satisfaction that all of the following are true:

(1) The proposed location offers a reasonable promise of adequate support for the proposed office;

(2) The proposed office is not being formed for other than legitimate objects;

(3) The proposed officers of the proposed office have sufficient banking experience and ability to afford reasonable promise of successful operation;

(4) The reputation and financial standing of the alien bank is such as to command the confidence and warrant belief that the business of the proposed office will be conducted honestly and efficiently in accordance with the intent and purpose of this chapter, as set forth in RCW 30.42.010 (as recodified by this act);

(5) The principal purpose of establishing such office shall be within the intent of this chapter.

The director shall not grant an application for an office of an alien bank unless the law of the foreign country under which laws the alien bank is organized permits a bank with its principal place of business in this state to establish in that foreign country a branch, agency or similar operation.

**Sec. 215.** RCW 30.42.105 and 1994 c 92 s 87 are each amended to read as follows:

An approved branch of an alien bank shall have the same power to make loans and guarantee obligations as a state bank chartered pursuant to this title ((30-RCW)): PROVIDED, HOWEVER, That the base for computing the applicable loan limitation shall be the entire capital and surplus of the alien bank. The director may adopt rules limiting the amount of loans to full-time employees of the branch.

**Sec. 216.** RCW 30.42.115 and 1994 c 92 s 88 are each amended to read as follows:

(1) Any branch of an alien bank that received approval of its branch application pursuant to RCW 30.42.090 (as recodified by this act), or that had filed its branch application pursuant to RCW 30.42.060 (as recodified by this act), on or before July 27, 1978, and any approved branch of an alien bank that has designated Washington as its home state pursuant to section 5 of the International Banking Act of 1978, shall have the same power to solicit and accept deposits as a state bank chartered pursuant to this title ((30-RCW)), except that acceptance of initial deposits of less than one hundred thousand dollars shall be limited to deposits of the following:

(a) Any business entity, including any corporation, partnership, association, or trust, that engages in commercial activity for profit: PROVIDED, That there shall be excluded from this category any such business entity that is organized under the laws of any state or the United States, is majority-owned by United States citizens or residents, and has total assets, including assets of majority owned subsidiaries, of less than one million five hundred thousand dollars as of the date of the initial deposit;

(b) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of the foregoing;

(c) Any international organization which is composed of two or more nations;

(d) Any draft, check, or similar instrument for the transmission of funds issued by the branch;

(e) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit;

(f) Any depositor who established a deposit account on or before July 1, 1982, and who has continuously maintained the deposit account since that date:

PROVIDED, That this subparagraph (f) of this subsection shall be effective only until July 1, 1985;

(g) Any other person: PROVIDED, That the amount of deposits under this subparagraph (g) of this subsection may not exceed four percent of the average of the branch's deposits for the last thirty days of the most recent calendar quarter, excluding deposits in the branch of other offices, branches, agencies, or wholly owned subsidiaries of the alien bank.

(2) As used in subsection (1) of this section, "initial deposit" means the first deposit transaction between a depositor and the branch. Different deposit accounts that are held by a depositor in the same right and capacity may be added together for purposes of determining the dollar amount of that depositor's initial deposit.

(3) Approved branches of alien banks, other than those described in subsection (1) of this section, may solicit and accept deposits only from foreign governments and their agencies and instrumentalities, persons, or entities conducting business principally at their offices or establishments abroad, and such other deposits that:

(a) Are to be transmitted abroad;

(b) Consist of collateral or funds to be used for payment of obligations to the branch;

(c) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(d) Consist of the proceeds of extensions of credit by the branch; or

(e) Represent compensation to the branch for extensions of credit or services to the customer.

(4) A branch may accept deposits, subject to the limitations set forth in subsections (1) and (3) of this section, only upon the same terms and conditions (including nature and extent of such deposits, withdrawal, and the payment of interest thereon) that banks organized under the laws of this state which are members of the Federal Reserve System may accept such deposits. Any branch that is not subject to reserve requirements under regulations of the Federal Reserve Board shall maintain deposit reserves in this state, pursuant to rules adopted by the director, to the same extent they must be maintained by banks organized under the laws of this state which are members of the Federal Reserve System.

**Sec. 217.** RCW 30.42.120 and 1994 c 92 s 89 are each amended to read as follows:

A branch shall not commence to transact in this state the business of accepting deposits or transact such business thereafter unless it has met the following requirements:

(1) It has obtained federal deposit insurance corporation insurance covering its eligible deposit liabilities within this state, or in lieu thereof, made arrangements satisfactory to the director for maintenance within this state of additional capital equal to not less than five percent of its deposit liabilities, computed on the basis of the average daily net deposit balances covering semimonthly periods as prescribed by the director. Such additional capital shall

be deposited in the manner provided in RCW 30.42.070 (as recodified by this act).

(2) It holds in this state currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness or other obligations payable in the United States or in United States funds or, with the approval of the director, in funds freely convertible into United States funds or such other assets as are approved by the director, in an amount not less than one hundred percent of the aggregate amount of liabilities of such alien bank payable at or through its office in this state. When calculating the value of the assets so held, credit shall be given for the amounts deposited pursuant to RCW 30.42.060(3) and 30.42.120(1) (as recodified by this act), but there shall be excluded all amounts due from the head office and any other branch, agency, or other office or wholly-owned subsidiary of the bank, except those amounts due from such offices or subsidiaries located within the United States and payable in United States dollars.

(3) If deposits are not insured by the federal deposit insurance corporation, then that fact shall be disclosed to all depositors pursuant to rules of the director.

(4) If the branch conducts an international banking facility, the deposits of which are exempt from reserve requirements of the federal reserve banking system, the liabilities of that facility shall be excluded from the deposit and other liabilities of the branch for the purposes of subsection (1) of this section.

**Sec. 218.** RCW 30.42.130 and 1994 c 92 s 90 are each amended to read as follows:

The director may take possession of the office of an alien bank for the reasons stated and in the manner provided in chapter 30.44 RCW (as recodified by this act). Upon the director taking such possession of a branch, no deposit liabilities of which are insured by the federal deposit insurance corporation, the amounts deposited pursuant to RCW 30.42.120(1) (as recodified by this act) shall thereupon become the property of the director, free and clear of any and all liens and other claims, and shall be held by the director in trust for the United States domiciled depositors of the office in this state of such alien bank. Upon obtaining the approval of the superior court of Thurston county, the director shall reduce such deposited capital to cash and as soon as practicable distribute it to such depositors.

If sufficient cash is available, such distribution shall be in equal amounts to each such depositor: PROVIDED, That no such depositor receives more than the amount of his or her deposit or an amount equal to the maximum amount insured by the federal deposit insurance corporation, whichever is less. If sufficient cash is not available, such distribution shall be on a pro rata basis to each such depositor: PROVIDED, That no such depositor receives more than the maximum amount insured by the federal deposit insurance corporation. If any cash remains after such distribution, it shall be distributed pro rata to those depositors whose deposits have not been paid in full: PROVIDED, That no depositor receives more than the amount of his deposit. For purposes of this section, the term "depositor" shall not include any other offices, subsidiaries or affiliates of such alien bank.

The term "deposit" as used in this section shall mean the unpaid balance of money or its equivalent received or held by the branch in the usual course of its business and for which it has given or is obligated to give credit, either

conditionally or unconditionally to a demand, time or savings account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the branch, or a letter of credit or traveler's checks on which the branch is primarily liable.

Claims of depositors and creditors shall be made and disposed of in the manner provided in chapter 30.44 RCW (as recodified by this act) in the event of insolvency or inability of the bank to pay its creditors in this state. The capital deposit of the bank shall be available for claims of depositors and creditors. The claims of depositors and creditors shall be paid from the capital deposit in the following order or priority:

- (1) Claims of depositors not paid from the amounts deposited pursuant to RCW 30.42.120(1) (as recodified by this act);
- (2) Claims of Washington domiciled creditors;
- (3) Other creditors domiciled in the United States; and
- (4) Creditors domiciled in foreign countries.

The director shall proceed in accordance with and have all the powers granted by chapter 30.44 RCW (as recodified by this act).

**Sec. 219.** RCW 30.42.155 and 1982 c 95 s 5 are each amended to read as follows:

(1) In addition to the taking of deposits and making of loans as provided in this chapter, a branch of an alien bank shall have the power only to carry out these other activities:

- (a) Borrow funds from banks and other financial institutions;
- (b) Make investments to the same extent as a state bank chartered pursuant to this title (~~(30 RCW)~~);
- (c) Buy and sell foreign exchange;
- (d) Receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other securities for collection abroad and collect such instruments in the United States for customers abroad;
- (e) Hold securities in safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;
- (f) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or of any state or the District of Columbia, to do business in the United States;
- (g) In order to prevent loss on debts previously contracted a branch may acquire shares in a corporation: PROVIDED, That the shares are disposed of as soon as practical but in no event later than two years from the date of acquisition;
- (h) Issue letters of credit and create acceptances;
- (i) Act as paying agent or trustee in connection with revenue bonds issued pursuant to chapter 39.84 RCW, in which the user is: (i) A corporation organized under the laws of a country other than the United States, or a subsidiary or affiliate owned or controlled by such a corporation; or (ii) a corporation, partnership, or other business organization, the majority of the beneficial ownership of which is owned by persons who are citizens of a country other than the United States and who are not residents of the United States, and any subsidiary or affiliate owned or controlled by such an organization; or in which the bank purchases twenty-five percent or more of the bond issue. For the

purposes of chapter 39.84 RCW, such an alien bank shall be deemed to possess trust powers.

(2) In addition to the powers and activities expressly authorized by this section, a branch shall have the power to carry on such additional activities which are necessarily incidental to the activities expressly authorized by this section.

**Sec. 220.** RCW 30.42.280 and 1973 1st ex.s. c 53 s 28 are each amended to read as follows:

The directors or other governing body of an alien bank and the officers and employees of its office in this state shall be subject to all of the duties, responsibilities and restrictions to which the directors, officers and employees of a bank organized under the laws of this state are subject insofar as such duties, responsibilities and restrictions are not inconsistent with the intent of this chapter. An officer or employee of the office of an alien bank doing business in this state pursuant to this chapter may be removed for the reasons stated and in the manner provided in RCW 30.12.040(~~(, as now or hereafter amended)~~) (as recodified by this act).

**Sec. 221.** RCW 30.42.310 and 1994 c 92 s 101 are each amended to read as follows:

An alien bank licensed to maintain an office or bureau in this state pursuant to this chapter may apply to the director for leave to change the location of its office or bureau. Such applications shall be accompanied by an investigation fee as established in accordance with RCW 30.42.330 (as recodified by this act). Leave for a change of location shall be granted if the director finds that the proposed new location offers reasonable promise of adequate support for the office.

**Sec. 222.** RCW 30.42.340 and 1973 1st ex.s. c 53 s 34 are each amended to read as follows:

(1) Any branch of an alien bank that is conducting business in this state on July 16, 1973 pursuant to RCW 30.04.300 (as recodified by this act) shall not be subject to the provisions of this chapter, and shall continue to conduct its business pursuant to RCW 30.04.300 (as recodified by this act).

(2) Except as provided in subsection (1) of this section, any alien bank that is conducting business in this state on July 16, 1973 shall be subject to the provisions of this chapter: PROVIDED, That any such alien bank which has operated an agency or similar operation in this state for at least the five years immediately preceding such effective date shall not be denied a certificate to operate an agency.

**Sec. 223.** RCW 30.44.010 and 2010 c 88 s 30 are each amended to read as follows:

(1) Under the circumstances set forth in subsection (2) of this section, the director may give to a bank (~~(or trust company)~~) a notice to correct an unsafe condition of the bank (~~(or trust company)~~); and if such bank (~~(or trust company)~~) fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as the director may allow, then the director may take possession of such bank (~~(or trust company)~~) as in the case of insolvency.

(2) The director is authorized to give notice and take possession of a bank (~~(or trust company)~~), as described in subsection (1) of this section, under the following circumstances:

(a) The obligations to its creditors, depositors, members, trust beneficiaries, if applicable, and others exceed its assets;

(b) It has willfully violated a supervisory directive, cease and desist order, or other authorized directive or order of the director;

(c) It has concealed its books, papers, records, or assets, or refused to submit its books, records, or affairs to any examiner of the department or the federal deposit insurance corporation;

(d) It is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business;

(e) It ceases to have deposit insurance acceptable to the director;

(f) It fails to submit a capital restoration plan acceptable to the department within a time previously called for or materially fails to implement a capital restoration plan that was previously submitted and accepted by the department; or

(g) It is critically undercapitalized or otherwise has substantially insufficient capital.

**Sec. 224.** RCW 30.44.020 and 2010 c 88 s 31 are each amended to read as follows:

(1) Whenever it shall in any manner appear to the director that any offense or delinquency referred to in RCW 30.44.010 (as recodified by this act) has resulted in a bank (~~(or trust company)~~) being critically undercapitalized with no reasonably foreseeable prospect of recovery, or that it has suspended payment of its obligations or is insolvent, the director may notify such bank (~~(or trust company)~~) to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within such time and in such manner as the director may specify, or if the director deems necessary, the director may take possession thereof without notice.

(2) The board of directors of any such bank (~~(or trust company)~~), with the consent of the holders of record of two-thirds of the capital stock expressed either in writing or by vote at a stockholders' meeting called for that purpose, shall have power and authority to levy such assessment upon the stockholders pro rata and to forfeit the stock upon which any such assessment is not paid, in the manner prescribed in RCW 30.12.180 (as recodified by this act).

**Sec. 225.** RCW 30.44.030 and 2010 c 88 s 32 are each amended to read as follows:

Within ten days after the director takes possession thereof, a bank (~~(or trust company)~~) may serve a notice upon the director to appear before the superior court of the county wherein such corporation is located and at a time to be fixed by the court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why the director's action taking possession of the bank (~~(or trust company)~~) should not be affirmed. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it be found that possession was taken by the director in good faith and for cause, but if it find that no cause existed for the taking possession of such bank (~~(or trust~~



~~company~~), it shall require the director to restore such bank (~~(or trust company)~~) to possession of its assets and enjoin the director from further interference therewith without cause.

**Sec. 226.** RCW 30.44.040 and 1994 c 92 s 110 are each amended to read as follows:

Upon taking possession of any bank (~~(or trust company)~~), the director shall forthwith give written notice thereof to all persons having possession of any assets of such corporation. No person knowing of the taking of such possession by the director shall have a lien or charge for any payment thereafter advanced or clearance thereafter made or liability thereafter incurred against any of the assets of such corporation.

**Sec. 227.** RCW 30.44.050 and 1994 c 92 s 111 are each amended to read as follows:

Upon taking possession of any bank (~~(or trust company)~~), the director shall proceed to collect the assets thereof and to preserve, administer and liquidate the business and assets of such corporation. With the approval of the superior court of the county in which such corporation is located, he or she may sell, compound or compromise bad or doubtful debts, and upon such terms as the court shall direct borrow, mortgage, pledge or sell all or any part of the real estate and personal property of such corporation. He or she shall deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge or other instrument of title or security. If real estate is situated outside of said county, a certified copy of the orders authorizing and confirming the sale or mortgage thereof shall be filed for record in the office of the auditor of the county in which such property is situated. He or she may appoint special assistants and other necessary agents to assist in the administration and liquidation of such corporation, a certificate of such appointment to be filed with the clerk of the county in which such corporation is located. He or she shall require each special assistant to give a surety company bond, conditioned as he or she shall provide, the premium of which shall be paid out of the assets of such corporation. He or she may also employ an attorney for legal assistance in such administration and liquidation.

**Sec. 228.** RCW 30.44.100 and 2010 c 88 s 33 are each amended to read as follows:

No receiver shall be appointed by any court for any bank (~~(or trust company)~~), nor shall any assignment of any bank (~~(or trust company)~~) for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such corporation. Immediately upon any such appointment, the clerk of such court shall notify the director in writing of such appointment and the director shall forthwith take possession of such bank (~~(or, trust company)~~), as in case of insolvency, and the temporary receiver shall upon demand of the director surrender up to him or her such possession and all assets which shall have come into the possession of such receiver. The director shall in due course pay such receiver out of the assets of such corporation such amount as the court shall allow.

**Sec. 229.** RCW 30.44.110 and 2010 c 88 s 34 are each amended to read as follows:

(1) Every transfer of its property or assets by any bank (~~(or trust company)~~), made (a) in contemplation of insolvency or after it shall have become insolvent, (b) within ninety days before the date the director takes possession of such bank (~~(or trust company)~~) under RCW 30.44.010, 30.44.020, 30.44.100 or 30.44.160 (as recodified by this act), or the federal deposit insurance corporation is appointed as receiver or liquidator of such bank under RCW 30.44.270 (as recodified by this act), and (c) with a view to the preference of one creditor over another or to prevent the equal distribution of its property and assets among its creditors, shall be void.

(2) Every director, officer, or employee of a bank (~~(or trust company)~~) making any such transfer of assets is guilty of a class B felony punishable according to chapter 9A.20 RCW.

**Sec. 230.** RCW 30.44.120 and 2003 c 53 s 191 are each amended to read as follows:

An officer, director, or employee of any bank (~~(or trust company)~~) who shall fraudulently receive for it any deposit, knowing that such bank or trust company is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

**Sec. 231.** RCW 30.44.150 and 1994 c 92 s 119 are each amended to read as follows:

Any dividends to depositors or other creditors of such bank (~~(or trust company)~~) remaining uncalled for and unpaid in the hands of the director for six months after order of final distribution, shall be deposited in a bank (~~(or trust company)~~) to his or her credit, in trust for the benefit of the persons entitled thereto and subject to the supervision of the court shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action.

**Sec. 232.** RCW 30.44.160 and 2010 c 88 s 35 are each amended to read as follows:

(1) Subject to the consent of the director, a bank (~~(or trust company)~~) may voluntarily stipulate and consent to an order taking possession and thereby place itself under the control of the director to be liquidated and be made subject to receivership as provided in this chapter.

(2) Upon issuance of such order taking possession, the bank (~~(or trust company)~~) shall post a notice on its door as follows: "This bank (~~(or trust company)~~) is in the possession of the Director of the Washington State Department of Financial Institutions."

(3) The posting of such notice or the taking possession of any bank (~~(or trust company)~~) by the director shall be sufficient to place all of its assets and property of every nature in his or her possession and bar all attachment proceedings.

**Sec. 233.** RCW 30.44.170 and 1994 c 92 s 121 are each amended to read as follows:

Any bank (~~(or trust company)~~) may, upon receipt of written permission from the director, go into voluntary liquidation by a vote of its stockholders owning

two-thirds of its capital stock. When such liquidation is authorized, the directors of such corporation shall publish in a newspaper published in the place where such corporation is located, once a week for four consecutive weeks, a notice requiring creditors of such corporation to present their claims against it for payment.

**Sec. 234.** RCW 30.44.180 and 1994 c 92 s 122 are each amended to read as follows:

Whenever any bank (~~((or trust company))~~) shall voluntarily liquidate, any dividends to depositors or other creditors of such bank (~~((or trust company))~~) remaining uncalled for and unpaid at the conclusion of the liquidation shall be transmitted to the director and shall be deposited by him or her in a bank or trust company to his or her credit in trust for the benefit of the persons entitled thereto, and shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action.

**Sec. 235.** RCW 30.44.190 and 1994 c 92 s 123 are each amended to read as follows:

Whenever any bank (~~((or trust company))~~) shall be liquidated, voluntarily or involuntarily, and shall retain in its possession at the conclusion of the liquidation, uncalled for and unclaimed personal property left with it for safekeeping, such property shall, in the presence of at least one witness, be inventoried by the liquidating agent and sealed in separate packages, each package plainly marked with the name and last known address of the person in whose name the property stands on the books of the bank (~~((or trust company))~~). If the property is in safe deposit boxes, such boxes shall be opened by the liquidating agent in the presence of at least one witness, and the property inventoried, sealed in packages and marked as above required. All the packages shall be transmitted to the director, together with certificates signed by the liquidating agent and witness or witnesses, listing separately the property standing in the name of any one person on the books of the bank (~~((or trust company))~~), together with the date of inventory, and name and last known address of the person in whose name the property stands.

**Sec. 236.** RCW 30.44.200 and 1994 c 92 s 124 are each amended to read as follows:

Upon receiving possession of the packages, the director shall cause them to be opened in the presence of at least one witness, the property reinventoried, and the packages resealed, and held for safekeeping. The liquidated bank, its directors, officers, and shareholders, and the liquidating agent shall thereupon be relieved of responsibility and liability for the property so delivered to and received by the director. The director shall send immediately to each person in whose name the property stood on the books of the liquidated bank (~~((or trust company))~~), at his or her last known address, in a securely closed, postpaid and registered letter, a notice that the property listed will be held in his or her name for a period of not less than two years. At any time after the mailing of such notice, and before the expiration of two years, such person may require the

delivery of the property so held, by properly identifying himself or herself and offering evidence of his or her right thereto, to the satisfaction of the director.

**Sec. 237.** RCW 30.44.210 and 1994 c 92 s 125 are each amended to read as follows:

After the expiration of two years from the time of mailing the notice, the director shall mail in a securely closed postpaid registered letter, addressed to the person at his or her last known address, a final notice stating that two years have elapsed since the sending of the notice referred to in RCW 30.44.200 (as recodified by this act), and that the director will sell all the property or articles of value set out in the notice, at a specified time and place, not less than thirty days after the time of mailing the final notice. Unless the person shall, on or before the day mentioned, claim the property, identify himself or herself and offer evidence of his or her right thereto, to the satisfaction of the director, the director may sell all the property or articles of value listed in the notice, at public auction, at the time and place stated in the final notice: PROVIDED, That a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. Any such property held by the director, the owner of which is not known, may be sold at public auction after it has been held by the director for two years, provided, that a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held.

**Sec. 238.** RCW 30.44.220 and 1994 c 92 s 126 are each amended to read as follows:

The proceeds of such sale shall be deposited by the director in a bank (~~(or trust company)~~) to his or her credit, in trust for the benefit of the person entitled thereto, and shall be paid by him or her to such person upon receipt of satisfactory evidence of his or her right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action.

**Sec. 239.** RCW 30.44.230 and 1994 c 92 s 127 are each amended to read as follows:

Whenever the personal property held by a liquidated bank (~~(or trust company)~~) shall consist either wholly or in part, of documents, letters, or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be retained by the director for a period of five years, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of the director and at least one other witness.

**Sec. 240.** RCW 30.44.240 and 1994 c 92 s 128 are each amended to read as follows:

A bank (~~(or trust company)~~) may for the purpose of voluntary liquidation transfer its assets and liabilities to another bank (~~(or trust company)~~), by a vote, or with the written consent of the stockholders of record owning two-thirds of its capital stock, but only with the written consent of the director and upon such terms and conditions as he or she may prescribe. Upon any such transfer being made, or upon the liquidation of any such corporation for any cause whatever or

upon its being no longer engaged in the business of a bank (~~(or trust company)~~), the director shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation shall have been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done the director shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his or her records.

**Sec. 241.** RCW 30.44.250 and 1994 c 92 s 129 are each amended to read as follows:

Whenever the director has taken possession of a bank (~~(or trust company)~~) for any cause, he or she may wind up such corporation and cancel its certificate of authority, unless enjoined from so doing, as herein provided. Or if at any time within ninety days after taking possession, he or she shall determine that all impairment and delinquencies have been made good, and that it is safe and expedient for such corporation to reopen, he or she may permit such corporation to reopen upon such terms and conditions as he or she shall prescribe. Before being permitted to reopen, every such corporation shall pay all of the expenses of the director, as herein elsewhere defined.

**Sec. 242.** RCW 30.44.270 and 2010 c 88 s 36 are each amended to read as follows:

(1) The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any bank (~~(or trust company)~~) the deposits in which are to any extent insured by that corporation and of which the director shall have taken possession pursuant to RCW 30.44.010, 30.44.020, or 30.44.160 (as recodified by this act).

(2) In the event of such closing, the director may appoint the federal deposit insurance corporation as receiver or liquidator of such bank (~~(or trust company)~~).

(3) If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a bank (~~(or trust company)~~), its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended.

**Sec. 243.** RCW 30.44.280 and 1994 c 92 s 132 are each amended to read as follows:

The pendency of any proceedings for judicial review of the director's actions in taking possession and control of a bank (~~(or trust company)~~) and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the bank (~~(or trust company)~~) which are insured by the corporation. During the pendency of any proceedings for judicial review, the director shall make available to the federal deposit insurance corporation such facilities in or of the bank (~~(or trust company)~~) and such books, records, and other relevant data of the bank (~~(or trust company)~~) as may be necessary or appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the bank (~~(or trust company)~~). The federal deposit insurance corporation and its directors, officers, agents, and employees, and the director and his or her agents and employees shall be free from liability to the bank (~~(or~~

~~trust company~~), its directors, stockholders, and creditors for or on account of any action taken in connection herewith.

**Sec. 244.** RCW 30.46.010 and 2010 c 88 s 37 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Unsafe condition" shall mean and include, but not be limited to, any one or more of the following circumstances:

(a) If a bank (~~or trust company~~) is less than well capitalized;

(b) If a bank (~~or trust company~~) violates the applicable provisions of (~~Title 30 RCW~~) this title or any other law or regulation applicable to banks or trust companies;

(c) If a bank (~~or trust company~~) conducts a fraudulent or questionable practice in the conduct of its business that endangers a bank's (~~or trust company's~~) reputation or threatens its solvency;

(d) If a bank (~~or trust company~~) conducts its business in an unsafe or unauthorized manner;

(e) If a bank (~~or trust company~~) violates any conditions of its charter or any agreement entered with the director; or

(f) If a bank (~~or trust company~~) fails to carry out any authorized order or direction of the examiner or the director.

(2) "Exceeded its powers" shall mean and include, but not be limited to the following circumstances:

(a) If a bank (~~or trust company~~) has refused to permit examination of its books, papers, accounts, records, or affairs by the director, assistant director, or duly commissioned examiners; or

(b) If a bank (~~or trust company~~) has neglected or refused to observe an order of the director to make good, within the time prescribed, any impairment of its capital.

(3) "Consent" includes and means a written agreement by the bank (~~or trust company~~) to either supervisory direction or conservatorship under this chapter.

**Sec. 245.** RCW 30.46.020 and 2013 c 76 s 14 are each amended to read as follows:

(1) If upon examination or at any other time it appears to the director that any bank (~~or trust company~~) is in an unsafe condition and its condition is such as to render the continuance of its business hazardous to the public or to its depositors and creditors, or if such bank (~~or trust company~~) appears to have exceeded its powers or has failed to comply with the law, or if such bank (~~or trust company~~) gives its consent, then the director shall upon his or her determination (a) notify the bank (~~or trust company~~) of his or her determination, and (b) furnish to the bank (~~or trust company~~) a written list of the director requirements to abate his or her determination, and (c) if the director makes further determination to directly supervise, notify the bank (~~or trust company~~) that it is under the supervisory direction of the director and that the director is invoking the provisions of this chapter. If placed under supervisory direction the bank (~~or trust company~~) shall comply with the lawful requirements of the director within such time as provided in the notice of the director, subject however, to the provisions of this chapter. If the bank (~~or trust~~

~~company~~) fails to comply within such time the director may appoint a conservator as hereafter provided.

(2) A person appointed as conservator by the director pursuant to this chapter is immune from criminal, civil, and administrative liability for any act done in good faith in the performance of the duties of conservator.

**Sec. 246.** RCW 30.46.030 and 2013 c 76 s 15 are each amended to read as follows:

During the period of supervisory direction the director may appoint a representative to supervise such bank (~~(or trust company)~~) and may provide that the bank (~~(or trust company)~~) may not do any of the following during the period of supervisory direction, without the prior approval of the director or the appointed representative:

- (1) Dispose of, convey, or encumber any of the assets, excluding trust assets under management;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property; or
- (6) Incur any debt, obligation, or liability.

**Sec. 247.** RCW 30.46.040 and 2013 c 76 s 16 are each amended to read as follows:

After the period of supervisory direction specified by the director for compliance, if he or she determines that such bank (~~(or trust company)~~) has failed to comply with the lawful requirements imposed, upon due notice and hearing or by consent of the bank, the director may appoint a conservator, who shall immediately take charge of such bank (~~(or trust company)~~) and all of its property, books, records, and effects. The conservator shall conduct the business of the bank (~~(or trust company)~~) and take such steps toward the removal of the causes and conditions which have necessitated such order, as the director may direct. During the pendency of the conservatorship the conservator shall make such reports to the director from time to time as may be required by the director, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such bank (~~(or trust company)~~), including claims or causes of actions belonging to or which may be asserted by such bank, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against such bank (~~(or trust company)~~) which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby. The director, or any newly appointed assistant, may be appointed to serve as conservator. If the director, however, is satisfied that such bank (~~(or trust company)~~) is not in condition to continue business in the interest of its customers under the conservator as above provided, the director may proceed with appropriate remedies provided by other provisions of this title.

**Sec. 248.** RCW 30.46.050 and 2013 c 76 s 17 are each amended to read as follows:

All costs incident to supervisory direction and the conservatorship shall be fixed and determined by the director and shall be a charge against the assets of

the bank (~~(or trust company)~~), excluding trust assets under management, to be allowed and paid as the director may determine.

**Sec. 249.** RCW 30.46.060 and 2013 c 76 s 18 are each amended to read as follows:

During the period of the supervisory direction and during the period of conservatorship, the bank (~~(or trust company)~~) may request the director to review an action taken or proposed to be taken by the representative or conservator; specifying wherein the action complained of is believed not to be in the best interest of the bank (~~(or trust company)~~), and such request shall stay the action specified pending review of such action by the director. Any order entered by the director appointing a representative and providing that the bank (~~(or trust company)~~) shall not do certain acts as provided in RCW 30.46.030 and 30.46.040 (as recodified by this act), any order entered by the director appointing a conservator, and any order by the director following the review of an action of the representative or conservator as herein above provided shall be subject to review in accordance with the administrative procedure act of the state of Washington.

**Sec. 250.** RCW 30.46.070 and 2013 c 76 s 19 are each amended to read as follows:

Any suit filed against a bank or its conservator (~~(or a trust company or its conservator)~~), after the entrance of an order by the director placing such bank (~~(or trust company)~~) in conservatorship and while such order is in effect, shall be brought in the superior court of Thurston county and not elsewhere. The conservator appointed hereunder for such bank (~~(or trust company)~~) may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of such bank (~~(or trust company)~~) including claims or causes of action belonging to or which may be asserted by such bank.

**Sec. 251.** RCW 30.46.080 and 2013 c 76 s 20 are each amended to read as follows:

The conservator shall serve for such time as is necessary to accomplish the purposes of the conservatorship as intended by this chapter. If rehabilitated, the rehabilitated bank (~~(or trust company)~~) shall be returned to management or new managements under such conditions as are reasonable and necessary to prevent recurrence of the condition which occasioned the conservatorship.

**Sec. 252.** RCW 30.46.090 and 2013 c 76 s 21 are each amended to read as follows:

If the director determines to act under authority of this chapter, the sequence of his or her acts and proceedings shall be as set forth in this chapter. However, it is the purpose and substance of this chapter to authorize administrative discretion—to allow the director administrative discretion in the event of unsound banking (~~(or trust company)~~) operations—and in furtherance of that purpose the director is hereby authorized to proceed with regulation either under this chapter or under any other applicable provisions of law or under this chapter in connection with other law, either as such law is now existing or is hereinafter enacted, and it is so provided.

**Sec. 253.** RCW 30.49.020 and 1955 c 33 s 30.49.020 are each amended to read as follows:



This section is applicable where there is to be a resulting national bank.

Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed at the time of the action for national banks merging with or converting into a resulting state bank by the law of the United States, and not by the law of this state, except that a vote of the holders of two-thirds of each class of voting stock of a state bank shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in RCW 30.49.090 (as recodified by this act).

Upon the completion of the merger or conversion, the franchise of any merging or converting state bank shall automatically terminate.

**Sec. 254.** RCW 30.49.070 and 1994 c 92 s 145 are each amended to read as follows:

Except as provided in RCW 30.49.100 (as recodified by this act), a national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank shall be granted a state charter by the director if he or she finds that the bank meets the standards as to location of offices, capital structures, and business experience and character of officers and directors for the incorporation of a state bank.

The national bank may apply for such charter by filing with the director a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank.

**Sec. 255.** RCW 30.49.125 and 1996 c 2 s 9 are each amended to read as follows:

(1) This section is applicable where the resulting bank would have branches inside and outside the state of Washington.

(2) As used in this section, unless a different meaning is required by the context, the following words and phrases have the following meanings:

(a) "Combination" means a merger or consolidation, or purchase or sale of all or substantially all of the assets, including all or substantially all of the branches.

(b) "Out-of-state bank" means a bank, as defined in 12 U.S.C. Sec. 1813(a), which is chartered under the laws of any state other than this state, or a national bank, the main office of which is located in any state other than this state.

(c) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(3) A bank chartered under this title may engage in a combination or purchase and assumption of one or more branches of an out-of-state bank with an out-of-state bank with the prior approval of the director if the combination or purchase and assumption would result in a bank chartered under this title. Upon notice to the director a bank chartered under this title and an out-of-state bank

may engage in a combination if the combination would result in an out-of-state bank. However, that combination shall comply with applicable Washington law as determined by the director, including but not limited to applicable state merger laws, and the conditions and requirements of this section.

(4) Applications for the director's approval under subsection (3) of this section shall be on a form prescribed by the director and conditioned upon payment of ~~((the))~~ a fee prescribed pursuant to RCW ~~((30.08.095))~~ 30.04.070 (as recodified by this act). If the director finds that (a) the proposed combination will not be detrimental to the safety and soundness of the applicant or the resulting bank, (b) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (c) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this state and is otherwise in the public interest, the director shall approve the interstate combination and the operation of branches outside of Washington by the applicant bank. This transaction may be consummated only after the applicant has received evidence of the director's written approval.

(5) Any out-of-state bank that will be the resulting bank pursuant to an interstate combination involving a bank chartered under this title shall notify the director of the proposed combination not later than three days after the date of filing of an application for the combination with the responsible federal bank supervisory agency, and shall submit a copy of that application to the director and pay applicable filing fees, if any, required by the director. In lieu of notice from the proposed resulting bank the director may accept notice from the bank's supervisory agency having primary responsibility for the bank. The director shall have the authority to waive any procedures required by Washington merger laws if the director finds that the procedures are in conflict with applicable federal law or in conflict with the applicable law of the state of the resulting bank.

(6) Subject to RCW 30.38.010(2) (as recodified by this act), the deposit concentration limits stated in 12 U.S.C. Sec. 1831u(b)(2)(B) shall apply to the combination of an out-of-state bank and a nonaffiliated out-of-state bank or bank organized under this title or under the national bank act if the combination is an interstate merger transaction ~~((as defined by 12 U.S.C. Sec. 1831u(f)(6)))~~.

(7) A combination resulting in the acquisition, by an out-of-state bank that does not have branches in this state, of a bank organized under this title or the national bank act, shall not be permitted under this chapter unless the bank to be acquired, or its predecessors, have been in continuous operation, on the date of the combination, for a period of at least five years.

**Sec. 256.** RCW 30.56.050 and 1994 c 92 s 153 are each amended to read as follows:

At the request of the directors of a bank, the director may propose a plan for its reorganization, if in his or her judgment it would be for the best interests of the bank's creditors and of the community which the bank serves. The plan may contemplate such temporary ratable reductions of the demands of depositors and other creditors as would leave its reserve adequate and its capital and surplus unimpaired after the charging off of bad and doubtful debts; and also may contemplate a postponement of payments as in a case falling within RCW 30.56.020 (as recodified by this act). The plan shall be fully described in a

writing, the original of which shall be filed in the office of the director and several copies of which shall be furnished the bank, where one or more copies shall be kept available for inspection by stockholders, depositors and other creditors.

**Sec. 257.** RCW 30.56.060 and 1994 c 92 s 154 are each amended to read as follows:

If, within ninety days after the filing of the plan, creditors having unsecured demands against the bank aggregating not less than three-fourths of the amount of the unsecured demands of all its creditors, approved the plan, the director shall have power to declare the plan to be in effect. Thereupon the unsecured demands of creditors shall be ratably reduced according to the plan and appropriate debits shall be made in the books. The right of a secured creditor to enforce his or her security shall not be affected by the operation of the plan, but the amount of any deficiency to which he or she may be entitled shall be reduced as unsecured demands were reduced. If the plan contemplates a temporary postponement of payments, RCW 30.56.020, 30.56.030 and 30.56.040 (as recodified by this act) shall be applicable, and the bank shall comply therewith and conduct its affairs accordingly.

**NEW SECTION. Sec. 258. CONSTRUCTION.** The provisions of this title, insofar as they are substantially the same as statutory provisions repealed by this act and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

**NEW SECTION. Sec. 259.** 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. 260.** This title does not affect the legality of investments, made prior to January 5, 2015, or of transactions had before January 5, 2015, pursuant to any provisions of law in force when such investments were made or transactions had.

**NEW SECTION. Sec. 261. DIRECTOR'S SUBPOENAS.** (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the

person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

(4) Subsections (1) through (3) of this section are applicable to the director's enforcement authority under this title against persons engaged in unauthorized banking activity and persons, other than a bank authorized under this title, whom the director has reason to believe are in violation of this title. This section does not limit the authority of the director to investigate or examine a bank authorized under this title without applying for or obtaining a superior court order or issuing a subpoena pursuant to this section.

**Sec. 262.** 2013 c 76 s 33 (uncodified) is amended to read as follows:

Sections 7 and 8, chapter 303, Laws of 2011 (~~and~~), sections 10 and 25, chapter 76, Laws of 2013, and section 166, chapter . . . , Laws of 2014 (section 166 of this act) take effect when the director of the department of financial institutions finds that a federal regulatory agency has, through federal law, regulation, or official regulatory interpretation, interpreted federal law to permit banks operating under the authority of Title 30 (as recodified by this act) or 32 RCW to conduct a promotional contest of chance as defined in RCW 30.22.040 (as recodified by this act). If the contingency occurs, the director shall notify the chief clerk of the house of representatives, the secretary of the senate, and the office of the code reviser.

NEW SECTION. **Sec. 263.** The following acts or parts of acts are each repealed:

(1) RCW 30.08.155 (Powers and authorities of trust companies—Federally chartered trust companies—Out-of-state state trust companies—Findings of director) and 2013 c 76 s 11 & 1998 c 45 s 2;

(2) RCW 30.53.010 (Definitions) and 1994 c 256 s 59;

(3) RCW 30.53.020 (Approval by director—Required) and 1994 c 256 s 60;

(4) RCW 30.53.030 (Contents of merger agreement—Approval by each board of directors—Requirements for director's approval) and 1994 c 256 s 61;

(5) RCW 30.53.040 (Approval by stockholders—Voting—Notice) and 1994 c 256 s 62;

(6) RCW 30.53.050 (Effective date of merger—Certificate of merger) and 1994 c 256 s 63;

(7) RCW 30.53.060 (Resulting trust company—Property, rights, powers, and duties) and 1994 c 256 s 64;

(8) RCW 30.53.070 (Dissenting shareholders—May receive value in cash—Appraisal) and 1998 c 45 s 3 & 1994 c 256 s 65; and

(9) RCW 30.53.080 (Valuation of assets—Books of merging trust company) and 1994 c 256 s 66.

NEW SECTION. **Sec. 264.** Section 165 of this act expires when the contingency under section 262 of this act has occurred.

## GENERAL PROVISIONS

NEW SECTION. **Sec. 301.** SHORT TITLE. This title may be known and cited as the Washington trust institutions act.

**NEW SECTION. Sec. 302.** DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

The definitions in this section shall be liberally construed to accomplish the purposes of this title. Additional definitions, as applicable, are contained elsewhere in this title. The department may adopt by rule other definitions to accomplish the purposes of this title.

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

(2) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease, insure, safekeep, or otherwise manage the property.

(3) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company.

(4) "Authorized trust institution" means a trust institution with authority to engage in trust business in Washington state pursuant to statute.

(5) "Bank" has the meaning set forth in 12 U.S.C. Sec. 1813(h); provided that the term "bank" does not include any "foreign bank" as defined in 12 U.S.C. Sec. 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(6) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies.

(7) "Capital" has the meaning ascribed to that term by generally accepted accounting principles and applicable rules of the financial accounting standards board, and includes surplus and undivided profits.

(8) "Charter" means a charter or other certificate of authority issued by the director or a bank supervisory agency authorizing a trust institution to engage in business in its home state.

(9) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(10) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

(11) "Conservator" means the director or an agent of the director exercising the powers and duties provided by section 386 of this act.

(12) "Control" means:

(a) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent of the outstanding shares of a class of voting securities of a state trust company or other company;

(b) The ability to control the election of a majority of the board of a state trust company or other company;

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the director after notice and an opportunity for hearing; or

(d) The conditioning of the transfer of more than twenty-five percent of the outstanding shares or participation shares of a class of voting securities of a state trust company or other company on the transfer of more than twenty-five percent of the outstanding shares of a class of voting securities of another state trust company or other company.

(13) "Custodial account" means an account, established by a person with a bank as defined in 26 U.S.C. Sec. 408(n), or with another person approved by the internal revenue service as satisfying the requirements to be a nonbank trustee or a nonbank passive trustee set forth in United States treasury regulations under 26 U.S.C. Sec. 408, that is governed by an instrument concerning the establishment or maintenance, or both, of an individual retirement account, qualified retirement plan, Archer medical savings account, health savings account, Coverdell education savings account, any similar retirement or savings vehicle permitted under the internal revenue code of 1986, or as otherwise defined by the director by rule.

(14) "Department" means the department of financial institutions.

(15) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. Sec. 1813(c)(2) and (3).

(16) "Director" means the director of financial institutions.

(17) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust company, whether in physical or electronic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

(18) "Foreign bank" means a foreign bank, as defined in section 1(b)(7) of the international banking act of 1978, chartered to act as a fiduciary in a state other than Washington state. As used in this title, "foreign bank" excludes an alien bank authorized to do business in this state under chapter 30.42 RCW (as recodified by this act).

(19) "Home state" means:

(a) With respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office; and

(b) With respect to any other trust institution, the state which chartered such institution.

(20) "Home state regulator" means the trust institutions supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(21) "Host state" means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(22) "Insolvent" means a circumstance or condition in which a state trust company:

(a) Has actual cash market value of its assets which are insufficient to pay its liabilities to its creditors;

(b) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(c) Sells or attempts to sell substantially all of its assets other than as provided in section 381 of this act or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by chapter 30B.— RCW (sections 387 through 396 of this act); or

(d) Attempts to dissolve or liquidate without approval of the director under chapter 30B.— RCW (sections 376 through 381 of this act);

(e) After demand in writing by the director, fails to cure any deficiency in its reserves as required by statute or rule;

(f) After written demand by the director, the stockholders fail to cure within the time prescribed by the director an impairment of the state trust company's capital or surplus; or

(g) Is insolvent within the meaning of the United States bankruptcy code.

(23) "Instrument" means a revocable or irrevocable trust document created inter vivos or testamentary or any custodial account agreement.

(24) "Internet trust business" means a trust business that holds itself out as a trustee or fiduciary to the general public of this state by means of the internet or other electronic means.

(25) "Law firm" means a professional service corporation, professional limited liability company, or limited liability partnership, that is duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys.

(26) "Limited liability trust company" means an entity organized under the limited liability company act of this state that is chartered as a trust company under this title.

(27) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(28) "Manager" means a person elected to the board of a limited liability trust company.

(29) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(30) "Out-of-state trust institution" means a trust institution that is not a state trust company under this title.

(31) "Person" means an individual, a company, or any other legal entity.

(32) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(33) "Private trust" has the meaning set forth in section 397 of this act.

(34) "Private trust company" has the meaning set forth in section 397 of this act.

(35) "Savings association" means a depository institution, other than a credit union, that is not a bank.

(36) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(37) "State" means a state of the United States, the District of Columbia, a territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(38) "State bank" means a bank authorized under Title 30A (the new title created under section 2 of this act) or 32 RCW to engage in trust business or an alien bank chartered or authorized under chapter 30.42 RCW (as recodified by this act) to engage in trust business in this state.

(39) "State savings association" means a savings association chartered or otherwise authorized under Title 33 RCW to act as a fiduciary by Washington state.

(40) "State trust company" means a corporation or a limited liability company organized or reorganized under this title, including a trust company organized under the laws of Washington state before the effective date of this section.

(41) "State trust institution," as used in chapter 30B.— RCW (sections 333 through 345 of this act), means a state trust company or an out-of-state trust institution engaged in trust business in this state.

(42) "Subsidiary" means a company that is controlled by another person. Subsidiary includes a subsidiary of a subsidiary and a lower tier subsidiary.

(43) "Trust business" means the holding out by a person to the public by advertisement, solicitation, or other means that the person is available to perform the powers of a state trust company set forth in section 329(1) (b) through (k) of this act, together with any other activity authorized for a state trust company by the director pursuant to section 329(1)(q) of this act that the director designates as trust business.

(44) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(45) "Trust department" means that group or groups of officers and employees of a trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the trust company, whether or not the group or groups are so named.

(46) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client.

(47) "Trust institution" means a depository institution, foreign bank, or trust company.

(48) "Unauthorized trust activity" means to engage in trust business in this state without authority or exemption under this title.



**NEW SECTION. Sec. 303. NAME OF TRUST INSTITUTION—USE OF TRUST IN NAME.** (1) A state trust company or out-of-state trust institution may register any name with the department in connection with establishing an office or otherwise engaged in trust business in this state pursuant to this title, except that the director may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

(2) Use of trust as part of a person's name, trademark, or service mark in connection with transacting business with the public, or as part of advertising by any person to the public, is subject to the prohibitions and restrictions under RCW 30.04.020 (as recodified by this act).

**NEW SECTION. Sec. 304. RULES—ADMINISTRATION AND INTERPRETATION OF TITLE.** (1) The director has the power to adopt rules, as he or she determines necessary and appropriate, to implement the purposes and provisions of this title in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) The director has the power, and broad administrative discretion, to administer and interpret the provisions of this title to facilitate the delivery of trust business and fiduciary services to the citizens of the state of Washington by trust businesses and other persons.

**NEW SECTION. Sec. 305. PERSONS AUTHORIZED TO ACT AS A FIDUCIARY.** Subject to the conditions, restrictions, limitations, and requirements of this title, the following persons are authorized trust institutions in Washington state:

(1) A state trust company with a certificate of authority from the director to exercise the powers of a state trust company pursuant to chapter 30B.— RCW (sections 321 through 332 of this act);

(2) A state bank under Title 30 RCW (as recodified by this act) exercising trust business powers under the authority of the director;

(3) A state bank under Title 32 RCW exercising trust business powers under the authority of the director;

(4) A state savings association organized under Title 33 RCW exercising trust business powers under authority of Title 33 RCW as permitted by the director;

(5) A national bank authorized by the comptroller of the currency to act as a fiduciary in this state pursuant to 12 U.S.C. Sec. 92a;

(6) A federally chartered savings bank or savings association authorized by the comptroller of the currency to act as a fiduciary in this state;

(7) An out-of-state state-chartered bank with a branch in this state established or maintained pursuant to and with trust powers under applicable law of a home state;

(8) An out-of-state trust institution with a trust office authorized by the director pursuant to this title;

(9) An alien bank under chapter 30.42 RCW (as recodified by this act) authorized by the director to act as a fiduciary or engage in trust business in this state pursuant to this title;

(10) A private trust or private trust company exempt from the regulation of the department under chapter 30B.— RCW (sections 397 through 400 of this act); or

(11) An exempt person under this title pursuant to section 306 of this act.

**NEW SECTION. Sec. 306. ACTIVITIES NOT REQUIRING CERTIFICATE OF AUTHORITY OR APPROVAL UNDER THIS TITLE.** Notwithstanding any other provision of this title, a person is exempt from the requirement of a certificate of authority or approval under this title, or from regulation by the director pursuant to this title, if the person is:

(1) An individual, sole proprietor, or general partnership or joint venture composed of individuals;

(2) Engaging in business in this state (a) as a national banking association or (b) as a federal mutual savings bank, federal stock savings bank, or federal savings and loan association under authority of the office of the comptroller of the currency;

(3) Acting in a manner otherwise authorized by law and within the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(4) Acting as a fiduciary solely by reason of being appointed by a court to perform the duties of a trustee, guardian, conservator, or receiver;

(5) While holding oneself out to the public as an attorney-at-law, law firm, or limited license legal technician, performing a service customarily performed as an attorney-at-law, law firm, or limited license legal technician in a manner approved and authorized by the supreme court of the state of Washington;

(6) Acting as an escrow agent pursuant to the escrow agent registration act, chapter 18.44 RCW, or in one's capacity as an authorized title agent under Title 48 RCW;

(7) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(8) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Washington department of licensing;

(9) Engaging in a securities transaction or providing an investment advisory service in the capacity of a licensed and registered broker-dealer, investment advisor, or registered representative thereof, provided the activity is regulated by the department or the United States securities and exchange commission;

(10) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the office of the insurance commissioner to the extent that the activity is regulated by the office of the insurance commissioner;

(11) Acting as trustee under a voting trust as provided by Washington state law;

(12) Acting as trustee by a public, private, or independent institution of higher education or a university system authorized under Washington state law, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to, or otherwise made available to such institution with respect to its educational or research purposes;

(13) Acting as a private trust or private trust company to the extent exempt from regulation of the department as set forth in chapter 30B.— RCW (sections 397 through 400 of this act); or

(14) Engaging in other activities expressly excluded from the application of this title by rule of the director.

**NEW SECTION. Sec. 307. PERSONS SUBJECT TO THE REQUIREMENT OF A CERTIFICATE OF AUTHORITY OR APPROVAL UNDER THIS TITLE.** (1) A person may not engage in unauthorized trust activity in this state.

(2) As a condition of engaging in trust business in this state, an out-of-state trust institution is required to obtain approval from the director and is subject to all other requirements of chapter 30B.— RCW (sections 366 through 375 of this act).

(3) As a condition of engaging in trust business in this state, a person, other than an out-of-state trust institution or an exempt person under section 306 of this act, is required to organize and obtain a certificate of authority as a state trust company pursuant to chapter 30B.— RCW (sections 321 through 332 of this act).

(4) A person who violates the requirements of subsection (2) or (3) of this section, as applicable, engages in unauthorized trust activity and is subject to enforcement by the director as set forth in chapter 30B.— RCW (sections 333 through 345 of this act).

**NEW SECTION. Sec. 308. CONFIDENTIALITY OF EXAMINATION INFORMATION.** This title does not limit the privileges, immunities, and requirements of RCW 42.56.400(6), 30.04.075 (as recodified by this act), 32.04.220, and 33.04.110 in relation to trust companies, state banks, and state savings associations.

**NEW SECTION. Sec. 309. LIMITS ON LOANS TO INSIDERS AND AFFILIATES—EXCEPTIONS.** (1) A state trust company may not make loans or extensions of credit, nor extend leases, to any person except in relation to nonfiduciary corporate funds and only as set forth in this section.

(2) Unless authorized by subsection (4) of this section, a state trust company may make loans or leases to insiders only to the extent permitted for state banks under federal reserve board regulation O, 12 C.F.R. Part 215.

(3) Unless authorized by subsection (4) of this section, a state trust company may make loans or leases to affiliates as may be reasonably determined by the director by rule. In the absence of rule making to the contrary, the director shall be guided by sections 23a and 23b of the federal reserve act, 12 U.S.C. Secs. 371c and 371c-1, and federal reserve board regulation W, 12 C.F.R. Part 223, governing the permissibility of loans and leases to affiliates by state banks that are members of the federal reserve.

(4) Notwithstanding any other provision of this section, a state trust company may make loans or extensions of credit, or extend leases, in relation to nonfiduciary corporate funds, subject to approval of the director upon written application.

(5) The director may adopt rules interpreting this section and may impose further conditions and restrictions on loans and extensions of credit by state trust companies not inconsistent with this section.

**NEW SECTION. Sec. 310.** TRANSACTIONS IN STATE TRUST COMPANY SHARES. (1) A state trust company may acquire its own shares if:

(a) The amount of its capital is sufficient to fully absorb the acquisition of the shares under regulatory accounting principles; or

(b) The state trust company obtains the prior written approval of the director.

(2) A state trust company may acquire a lien upon its own shares if:

(a) The aggregate amount of indebtedness so secured is less than the amount of the state trust company's capital; or

(b) The state trust company obtains the prior written approval of the director.

**NEW SECTION. Sec. 311.** INVESTMENT OF CORPORATE FUNDS—SECURITIES. A state trust company may invest its nonfiduciary corporate funds in investments other than real estate, including securities, that are permissible for state banks under Title 30 RCW (as recodified by this act), and as may be made applicable for state trust companies by rule of the director.

**NEW SECTION. Sec. 312.** INVESTMENT IN CORPORATIONS—SUBSIDIARIES. Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may invest in corporations, limited liability companies, and other entities, and may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary, in accordance with that which is permissible for state banks under RCW 30.04.125 and 30.04.127 (as recodified by this act).

**NEW SECTION. Sec. 313.** PLEDGE OF ASSETS. A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as otherwise specifically authorized or required by rules adopted under this chapter. An act, deed, conveyance, pledge, or contract in violation of this section is void.

**NEW SECTION. Sec. 314.** INVESTMENT IN STATE TRUST COMPANY FACILITIES. A state trust company may purchase, hold, and convey real estate, including facilities, for the purposes permissible for state banks under RCW 30.04.210 (as recodified by this act).

**NEW SECTION. Sec. 315.** SEPARATION OF TRUST RECORDS—RECORDKEEPING. (1) A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company.

(2) The fiduciary records must contain all material information relative to each account as appropriate under the circumstances.

(3) A state trust company shall comply with all other conditions and requirements for state banks engaging in trust business and the deposit of securities as set forth in RCW 30.04.240 (as recodified by this act).

**NEW SECTION. Sec. 316.** LEGAL SERVICES, ADVERTISING OF—PENALTY. RCW 30.04.260 (as recodified by this act) applies to this title.

**NEW SECTION. Sec. 317.** ACQUISITION OF CONTROL. Unless otherwise authorized by the director, a state trust company shall conform to all conditions and requirements concerning acquisition of control or change of

control the same as if the state trust company were a state bank, as set forth in RCW 30.04.400 through 30.04.410 (as recodified by this act), inclusive.

**NEW SECTION. Sec. 318. CHOICE OF LAW CLAUSES.** When there is a choice of law clause contained in a governing instrument in which a state trust company is a party, the choice of law of any state agreed to by the parties to such instrument shall control the interpretation and enforcement of the trust or custodial agreement comprising such instrument.

**NEW SECTION. Sec. 319. CHOICE OF LAW WHEN INSTRUMENT SILENT.** Except as set forth in section 318 of this act, choice of law is governed by RCW 11.98.005.

**NEW SECTION. Sec. 320. PUBLIC NOTICE BY ELECTRONIC MEANS.** (1) Notwithstanding any provisions of this title, wherever notice by publication is required by a trust institution, such notice may be undertaken by internet publication upon terms and conditions that the director may prescribe by rule.

(2) Notice to shareholders required under this title may be undertaken by electronic means in the same manner as permitted for general business corporations under RCW 23B.01.410.

## ORGANIZATION AND POWERS

**NEW SECTION. Sec. 321. WHO MAY ORGANIZE A STATE TRUST COMPANY.** Subject to the other provisions of this chapter, one or more persons may organize a state trust company.

**NEW SECTION. Sec. 322. FORMATION—ISSUANCE OF CERTIFICATE OF AUTHORITY—AMENDMENT OF ARTICLES, ETC.** Except as set forth in this chapter or as may be prescribed by rule of the director, RCW 30.08.020, 30.08.040, 30.08.050, 30.08.055, 30.08.060, 30.08.070, 30.08.081, 30.08.082, 30.08.083, 30.08.084, 30.08.086, 30.08.087, 30.08.088, 30.08.090, 30.08.092, and 30.08.170 (as recodified by this act) shall, in relation to state trust companies, govern the formation, furnishing of notice, approval or refusal of articles of organization, effect of failure to commence business, issuance and treatment of shares or equity, rights of preferred or special shareholders, determination of capital impairment, treatment of authorized unissued shares, amendment of articles of organization, authorization of increase or decrease of stock or equity, and appointment of nominees for the holding of securities, the same as if a state trust company were a state bank under Title 30 RCW (as recodified by this act).

**NEW SECTION. Sec. 323. LIMITED LIABILITY COMPANY—ORGANIZATION OR CONVERSION—APPROVAL OF DIRECTOR—CONDITIONS—APPLICATION OF CHAPTER 25.15 RCW—DEFINITIONS.** (1) The provisions of RCW 30.08.025 (as recodified by this act) shall govern the organization, conversion, approval of the director, and other matters incidental to the formation and operation of a state trust company as a limited liability company.

(2) The director may adopt rules necessary to clarify, interpret, and implement this section.

**NEW SECTION. Sec. 324.** APPLICATION FOR STATE TRUST COMPANY CERTIFICATE OF AUTHORITY. (1) An application to organize a state trust company charter must be made under oath and in the form required by the director and must be supported by information, data, records, and opinions of counsel that the director requires.

(2) The application must be accompanied by all fees and deposits required by statute or by rule of the director.

(3) The director shall issue a certificate of authority to a state trust company charter only on proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the director shall:

(a) Examine the business plan which shall be submitted as part of the application for a state trust company charter; and

(b) Consider:

(i) The market or markets to be served;

(ii) Whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(iii) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(iv) Whether the proposed officers, directors, and managers, or managing participants, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;

(v) Whether each principal shareholder or participant has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(vi) Whether the organizers are acting in good faith.

(4) The failure of an applicant to furnish required information, data, opinions of counsel, other material, or the required fee is considered an abandonment of the application.

**NEW SECTION. Sec. 325.** NOTICE AND INVESTIGATION OF APPLICATION. (1) The director shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Promptly after this notification, the organizers shall publish notice of the application and solicit comments in a form specified by the director at locations reasonably necessary to solicit the views of potentially affected persons specified by the director by rule.

(2) At the expense of the organizers, the director shall investigate the application and inquire into the identity and character of each proposed director, manager, officer, managing participant, and principal shareholder or participant. The director shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report under chapter 42.56 RCW.

(3) Rules adopted under this chapter may specify the confidential or nonconfidential character of information obtained by the department under this section.

(4) The financial statement of a proposed officer, director, manager, or managing participant is confidential and not subject to public disclosure under chapter 42.56 RCW.

**NEW SECTION. Sec. 326. REQUIRED CAPITAL.** (1) The director shall at time of application, to organize a state trust company, determine the minimum required initial capitalization of a proposed state trust company in the manner provided for in section 324(3)(b)(ii) of this act and as further provided in this section.

(2) The director may consider the following safety and soundness factors when determining minimum required capital, including, but not limited to:

- (a) The nature and type of business conducted;
- (b) The nature and degree of liquidity in assets held in a corporate capacity;
- (c) The amount of fiduciary assets under management;
- (d) The type of fiduciary assets held and the depository of such assets;
- (e) The complexity of fiduciary duties and degree of discretion undertaken;
- (f) The competence and experience of management;
- (g) The extent and adequacy of internal controls;
- (h) The presence or absence of annual unqualified audits by an independent certified public accountant;

(i) The reasonableness of business plans for retaining or acquiring additional capital;

(j) The existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, trust beneficiaries, and settlors;

(k) The history of operating losses, if any;

(l) The history of loss, if any, in relation to fiduciary or custodial accounts; and

(m) The amount of support from the state trust company's parent or affiliate.

(3) The effective date of a written finding requiring an existing state trust company to increase its capital must be stated in the written finding as on or after the thirty-first day after the date the written finding is mailed or delivered. Unless the state trust company requests a hearing before the director before the effective date of the written finding, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company.

(4) Subject to subsection (2) of this section, a state trust company to which the director issues a certificate of authority shall at all times maintain capital in at least the amount required under subsection (1) of this section, plus any additional amount or less any reduction the director directs under subsection (2) of this section.

(5) Notwithstanding any provision of this section, the director may establish by rule safety and soundness standards for minimum required capital, additional required capital, and reduction of capital, for a proposed or existing state trust company.

**NEW SECTION. Sec. 327. CAPITAL NOTES OR DEBENTURES.** (1) With the prior written approval of the director, any state trust company may at

any time, through action of its board of directors, issue and sell its capital notes or debentures, which shall be subordinate to the claims of depositors and other creditors.

(2) Unless otherwise approved by the director, a state trust company shall conform to all other conditions and requirements of chapter 30.36 RCW (as recodified by this act) governing capital notes and debentures of state banks.

**NEW SECTION. Sec. 328. APPLICATION OF GENERAL BUSINESS CORPORATION LAWS.** (1) Notwithstanding any other provision of this title, a state trust company shall be deemed a distinct species of corporation or limited liability trust company whose charter may be granted, conditioned, canceled, or revoked only by the department.

(2) Title 23B RCW applies to a state trust company to the extent not inconsistent with this title or the business of a state trust company, except that:

(a) Any reference to the secretary of state means the director unless the context requires otherwise; and

(b) The right of shareholders or participants to cumulative voting in the election of directors or managers exists only if granted by the state trust company's articles of association.

(3) Unless expressly authorized by this title or a rule of the department, a state trust company may not take an action authorized by Title 23B RCW or chapter 25.15 RCW regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which Title 23B RCW or chapter 25.15 RCW would require a filing with the secretary of state if the state trust company were a business corporation, without first submitting the filing to the director for the same purposes for which it otherwise would be required to be submitted to the secretary of state.

(4) The department may adopt rules to limit or refine the applicability of subsection (2) of this section to a state trust company or to alter or supplement the procedures and requirements of Title 23B RCW or chapter 25.15 RCW applicable to an action taken under this chapter.

**NEW SECTION. Sec. 329. POWERS OF A STATE TRUST COMPANY.** (1) Upon the issuance of a certificate of authority to a state trust company as prescribed in this chapter, the persons named in the articles of incorporation and their successors shall thereupon become a corporation or limited liability company and may engage in trust business and other business, including without limitation:

(a) Subject to section 328 of this act, exercising the powers of a Washington business corporation under Title 23B RCW or a Washington limited liability company under chapter 25.15 RCW reasonably necessary or helpful to enable exercise of its specific powers under this title;

(b) Receiving for safekeeping personal property of every description;

(c) Acting as assignee, bailee, conservator, custodian, recordkeeper, escrow agent, registrar, receiver, or transfer agent;

(d) Acting as financial advisor, investment advisor or manager, agent, or attorney-in-fact in any agreed upon capacity;

(e) Accepting or executing trusts, including:

(i) Acting as trustee under a written agreement;



(ii) Receiving money or other property in its capacity as trustee for investment in real or personal property;

(iii) Acting as trustee and performing the fiduciary duties committed or transferred to it by a valid and applicable court order;

(iv) Acting as trustee of the estate of a deceased person;

(v) Acting as trustee for a minor or incapacitated person;

(vi) Acting as a trustee of collective investment funds or common trust funds; or

(vii) Acting as a trustee of statutory or similar trusts;

(f) Administering in any other fiduciary capacity real or tangible personal property;

(g) Acting as an executor, administrator, guardian, or conservator;

(h) Acting as an assignee, receiver, agent, or custodian;

(i) Acting pursuant to valid and applicable court order as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;

(j) Acting in any capacity in which one exercises investment discretion on behalf of another;

(k) Exercising any incidental power or ancillary that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, the trust powers authorized by this title;

(l) Acting as a manager of a limited liability company, limited liability partnership, or similar entity;

(m) Acting as the registrar of stocks and bonds;

(n) Acting as an escrow agent, escrow holder, or managing agent;

(o) Acting as a corporate bond and transfer paying agent;

(p) Acting as a sponsoring or other member of any clearing corporation with respect to securities or other property; or

(q) Acting in any other capacity or for any other activity as determined or approved by the director.

(2) The director may prescribe rules for the safe and sound exercise of the powers enumerated in subsection (1) of this section.

(3) A state bank, to the extent authorized under Title 30 (as recodified by this act) or 32 RCW, as applicable, or a state savings association, to the extent authorized under Title 33 RCW, may exercise all of the powers and authorities of a state trust company under this title, including in relation to corporate governance matters.

**NEW SECTION. Sec. 330. ADDITIONAL POWERS OF A STATE TRUST COMPANY—FEDERAL AND INTERSTATE PARITY.** (1)

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a state trust company has under the laws of this state, a state trust company has the powers and authorities conferred as of the effective date of this section, upon a federally chartered trust company doing business in this state. A state trust company may exercise the powers and authorities conferred on a federally chartered trust company after this date only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of trustors and beneficiaries, or the general public; and

(b) Maintains the fairness of competition and parity between state trust companies and federally chartered trust companies.

(2) Notwithstanding any other provisions of law, a state trust company has the trust-related and fiduciary-related powers and authorities of an out-of-state trust institution approved by the director under chapter 30B.— RCW (sections 366 through 375 of this act).

(3) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(4) The restrictions, limitations, and requirements applicable to specific powers and authorities of federally chartered trust companies and out-of-state state trust institutions, as applicable, shall apply to state trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted trust companies solely under this section.

(5) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a state trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking, as of the effective date of this section.

(6) A state trust company that desires to perform an activity that is not authorized by subsection (5) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe and unsound practice by the state trust company, and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the state trust company is otherwise qualified, he or she shall immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the state trust company is not otherwise qualified, he or she shall promptly inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

**NEW SECTION. Sec. 331. SCOPE OF REGULATED ACTIVITIES OF A STATE TRUST COMPANY.** Notwithstanding the definition of "trust business" as set forth in section 302 of this act, the director has the authority to regulate the exercise of all powers and authorities of a state trust company which are enumerated in section 329 of this act and which may be conferred by way of parity under section 372 of this act.

**NEW SECTION. Sec. 332. INTERNET TRUST BUSINESS.** (1) A person engaged in trust business in this state by use of the internet is subject to regulation by the department under this title, unless it is:

(a) An out-of-state trust institution approved under chapter 30B.— RCW (sections 366 through 375 of this act) or acting under authority of section 402 of this act; or

(b) An exempt person under section 306 of this act.

(2) The director may adopt rules specific to the regulation of internet trust businesses in the interest of protecting Washington state citizens.

### **DIRECTOR'S AUTHORITY—SUPERVISION AND EXAMINATION—ENFORCEMENT**

**NEW SECTION. Sec. 333. DIRECTOR SUPERVISION OVER AUTHORIZED TRUST INSTITUTIONS.** (1) In addition to his or her supervision authority over the trust business of state banks and state savings associations, the director shall exercise supervision authority over state trust companies and also over out-of-state trust institutions to the extent provided for in cooperative agreements made by the director with the home states of out-of-state trust institutions pursuant to section 372 of this act.

(2) The director shall execute and enforce through the department and such other agents as exist on or after the effective date of this section, all laws which exist on or after the effective date of this section relating to state trust companies and out-of-state trust institutions engaged in trust business in this state.

(3) For the more complete and thorough enforcement of the provisions of this title, the department is authorized to adopt rules not inconsistent with the provisions of this title, as may, in its opinion, be necessary to carry out the provisions of this title and as may be further necessary to insure safe and sound management of trust institutions under its supervision taking into consideration the appropriate interest of the creditors, stockholders, participants, and the public in their relations with such trust institutions.

(4) A state trust company shall conduct its business in a manner consistent with all laws relating to trust companies, and all rules, regulations, and instructions that may be adopted or issued by the department.

**NEW SECTION. Sec. 334. FEE FOR EXAMINATION.** Examination and investigation fees, together with semiannual assessments of state trust companies and all other miscellaneous fees for trust institutions, are governed by RCW 30.04.070 (as recodified by this act) of the Washington commercial bank act and by rules adopted by the director.

**NEW SECTION. Sec. 335. DIRECTOR TO ACT UNDER AUTHORITY OF THE DEPARTMENT'S DIVISION OF BANKS.** All the powers, duties, and functions granted to or imposed upon the director under this title shall be exercised under the direction and supervision of the department's division of banks, subject to the delegation, oversight, and supervision of the director. Wherever provision is made in any law in effect on the effective date of this section authorizing and permitting the director to adopt rules and regulations with respect to any actions or things required to be done under this title, such rules and regulations shall be made by the department's division of banks, and the words "the director" used in such statutes authorizing the director to make

rules and regulations, shall be construed to mean the department's division of banks, and the words "department" substituted in such statutes for "director."

**NEW SECTION. Sec. 336. GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** Unless otherwise provided for by rule of the director or other applicable rule or regulation, a state trust company shall conform to generally accepted accounting principles and applicable rules of the financial accounting standards board.

**NEW SECTION. Sec. 337. EXAMINATION STANDARDS FOR STATE TRUST COMPANIES.** The director is authorized to adopt rules governing the examination standards for state trust companies and other persons subject to investigation and examination under this title, including the application by rule of examination standards of other federal and state financial institutions regulators and standards adopted incident to cooperative agreements made by the director under section 372 of this act.

**NEW SECTION. Sec. 338. DUTIES OF PERSONS SUBJECT TO AUTHORITY OF DIRECTOR—VIOLATIONS.** (1) Each person subject to the authority of the director, its subsidiaries, and their respective directors, officers, employees, and agents, shall comply with:

- (a) This title;
- (b) The rules adopted by the director pertaining to this title;
- (c) Any lawful directive or order of the director;
- (d) Any lawful supervisory agreement with the director or supervisory directive of the director; and
- (e) All applicable federal laws and regulations affecting trust institutions subject to the authority of the director.

(2) Each holding company of a person subject to the authority of the director, and its directors, officers, employees, and agents, shall comply with:

- (a) The provisions of this title that are applicable to each of them;
- (b) The rules adopted by the director with respect to such holding companies;
- (c) Any lawful direction or order of the director;
- (d) Any lawful supervisory agreement with the director; and
- (e) All applicable federal laws and regulations affecting trust institutions subject to the authority of the director.

(3) The violation of any supervisory agreement, directive, order, statute, rule, or regulation referenced in this section, in addition to any other penalty provided in this title, shall, at the option of the director, subject the offender to a penalty of up to ten thousand dollars for each offense, payable upon issuance of any order or directive of the director, which may be recovered by the attorney general in a civil action in the name of the department.

**NEW SECTION. Sec. 339. GOVERNING ADMINISTRATIVE LAW AND PROCEDURE.** The powers and duties of the director and required practices and procedures of the department with respect to all enforcement authority conferred by this title shall be subject to the Washington administrative procedure act, chapter 34.05 RCW, consistent with the administrative procedures applicable to enforcement actions against banks, their holding companies, and their officers, directors, employees, and agents, as set forth in Title 30 RCW (as recodified by this act), including but not limited to the following:

(1) Notice of administrative charges under RCW 30.04.450 (as recodified by this act);

(2) The provisions relating to grounds for, procedure for obtaining, and the effective date of emergency temporary orders under RCW 30.04.455 through 30.04.465 (as recodified by this act), inclusive;

(3) Enforcement of department orders under RCW 30.04.470 and 30.04.475 (as recodified by this act);

(4) Grounds for removal of officers, directors, and employees under RCW 30.12.040 (as recodified by this act);

(5) Procedure for suspension of an officer, director, or employee under RCW 30.12.0401 (as recodified by this act); and

(6) Notice of charges for removal of officers, directors, and employees under RCW 30.04.042 (as recodified by this act).

**NEW SECTION. Sec. 340.** ADMINISTRATIVE ORDERS—PENALTIES FOR VIOLATION. In addition to any other powers conferred by this title, the director shall have the power, consistent with the requirements of section 339 of this act, to:

(1) Order any person under authority of the director under this title, its holding company, its subsidiary, or any of their directors, officers, employees, or agents to cease and desist violating any provision of this title or any lawful rule;

(2) Order any authorized trust institution, its holding company, its subsidiary, or any of their directors, officers, employees, or agents to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution;

(3) Order any person to cease engaging in an unauthorized trust activity; and

(4) Enter any order pursuant to section 373 of this act.

**NEW SECTION. Sec. 341.** SUSPENSION AND REMOVAL OF DIRECTORS, OFFICERS, AND EMPLOYEES. The director has the power to require the suspension and removal from office of any officer, director, or employee of any trust institution subject to the director's authority, its holding company, or its subsidiary, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the institution, or who persistently violates the laws of this state or the lawful orders, instructions, and rules issued or adopted by the department.

**NEW SECTION. Sec. 342.** SUBPOENA POWER AND EXAMINATION UNDER OATH. The director shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the director.

**NEW SECTION. Sec. 343.** EFFECT OF FINAL ORDERS AGAINST OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS. Any present or former director, officer, or employee of a trust institution or holding company under authority of the director, or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of a trust institution involved, or who directly or indirectly solicits or procures, transfers or attempts to transfer, or

votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the trust institution, or who, without the prior approval of the director, votes for a director or serves or acts as a director, officer, employee, or agent of any bank, savings association, trust company, or holding company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW.

**NEW SECTION. Sec. 344. DIRECTOR'S AUTHORITY TO PROTECT THE PUBLIC AND STATE TRUST INSTITUTIONS.** (1) Notwithstanding any other provision of this title, the director may by rule or order prohibit any person from engaging in a trust business in this state contrary to the requirements of this title if the conduct of the trust business in this state by such person harms or is likely to harm the general public, or if it adversely affects the business of state trust institutions.

(2) The director may issue a temporary cease and desist order against such person in the manner provided for in this chapter if the general public or state trust institutions are likely to be substantially injured by delay in issuing a cease and desist order.

(3) An order or rule made by the director pursuant to this section may require that any applicable person obtain a certificate of authority under chapter 30B.— RCW (sections 321 through 332 of this act) as a condition of continuing to engage in a trust business in this state, subject to meeting all qualifications for grant of a state trust company certificate of authority under this title.

(4) This section does not apply to a person conducting business pursuant to section 306 of this act, except for a person identifiable solely by reason of section 306(1) of this act.

**NEW SECTION. Sec. 345. DIRECTOR'S SUBPOENAS.** (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

(4) Subsections (1) through (3) of this section are applicable to the director's enforcement authority under this title against persons engaged in unauthorized trust activity and persons, other than a state trust company authorized under this title, whom the director has reason to believe are in violation of this title. This section does not limit the authority of the director to investigate or examine a state trust company authorized under this title without applying for or obtaining a superior court order or issuing a subpoena pursuant to this section.

**STATE TRUST COMPANIES—  
BOARD OF DIRECTORS, OFFICERS, AND SHAREHOLDERS**

**NEW SECTION. Sec. 346.** VOTING SECURITIES HELD BY STATE TRUST COMPANY. (1) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless:

(a) Under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(b) The terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or

(c) The securities are voted solely by a cofiduciary that is not an affiliate of the state trust company, as if the cofiduciary were the sole fiduciary.

(2) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

**NEW SECTION. Sec. 347.** BYLAWS. (1) A state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Washington business corporation act.

(2) A limited liability trust company in which management is retained by the participants is not required to adopt bylaws if provisions required by law to be contained in the bylaws are contained in the articles of association or the participation agreement. If a limited liability trust company has adopted bylaws which designate each full liability participant, the limited liability trust company shall file with the director a copy of the bylaws. Solely that portion of the bylaws designating each full liability participant is a public record.

**NEW SECTION. Sec. 348.** BOARD OF DIRECTORS, MANAGERS, OR MANAGING PARTICIPANTS. (1) The board of a state trust company must consist of not fewer than five directors, managers, or managing participants. Except for a limited liability trust company in which management has been retained by its participants, the principal executive officer of the state trust company is a member of the board. The principal executive officer acting in the capacity of board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(2) Unless the director consents otherwise in writing, a person may not serve as director, manager, or managing participant of a state trust company if:

(a) The state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(b) The person has been convicted of a felony; or

(c) The person has violated a provision of Washington state law, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(3) If a state trust company other than a limited liability trust company operated by managing participants does not elect directors or managers before the sixty-first day after the date of its regular annual meeting, the director may appoint a conservator under this title to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors or managers, the director may close the state trust company for liquidation.

(4) A vacancy on the board that reduces the number of directors, managers, or managing participants to fewer than five must be filled not later than the thirtieth day after the date the vacancy occurs. A limited liability trust company with fewer than five managing participants must add one or more new participants or elect a board of managers of not fewer than five persons to resolve the vacancy. After thirty days after the date the vacancy occurs, the director may appoint a conservator under this title to operate the state trust company and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate or elect five persons willing and able to serve as directors or managers, the director may close the state trust company for liquidation.

(5) Before each term to which a person is elected to serve as a director or manager of a state trust company, or annually for a person who is a managing participant, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(a) Accepts the position and is not disqualified from serving in the position;

(b) Will not violate or knowingly permit an officer, director, manager, managing participant, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and

(c) Will diligently perform the duties of the position.

(6) An advisory director or manager is not considered a director if the advisory director or manager:

(a) Is not elected by the shareholders or participants of the state trust company;

(b) Does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(c) Provides solely general policy advice to the board.

**NEW SECTION. Sec. 349. REQUIRED BOARD MEETINGS.** The board of a state trust company shall hold at least one regular meeting each quarter. At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the state



trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All actions of the board must be recorded in its minutes.

**NEW SECTION. Sec. 350. OFFICERS.** (1) The board shall annually appoint the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. These positions may not be held by the same person. The board may appoint other officers of the state trust company as the board considers necessary.

(2) Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a state trust company asset or create or incur a liability on behalf of the state trust company.

(3) Unless otherwise approved by the director, the chief executive officer, the president, the chief operating officer, or the chief financial officer of a state trust company must be a Washington state resident.

**NEW SECTION. Sec. 351. CERTAIN CRIMINAL OFFENSES.** (1) An officer, director, manager, managing participant, employee, shareholder, or participant of a state trust company commits an offense if the person knowingly:

(a) Conceals information or a fact, or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the director or an agent of the director; or

(b) For the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(2) An officer, director, manager, managing participant, or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.

(3) An offense under this section is a class B felony.

**NEW SECTION. Sec. 352. BOARD'S RESPONSIBILITY.** The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) The determination of policies;

(2) The investment and disposition of property held in a fiduciary capacity; and

(3) The direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

**NEW SECTION. Sec. 353. BONDING REQUIREMENTS.** The board of a state trust company shall require protection and indemnity for clients in reasonable amounts consistent with the bonding requirements for a state bank under RCW 30.12.030 (as recodified by this act) and as may further be established by rule adopted under this chapter, against dishonesty, fraud,

defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies.

**NEW SECTION. Sec. 354. REPORTS OF APPARENT CRIME.** A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of five thousand dollars, or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, manager, managing participant, officer, or employee shall report such robbery, shortages, or apparent or suspected misapplication to the director within forty-eight hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, manager, managing participant, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.

**NEW SECTION. Sec. 355. ADMINISTRATION OF FIDUCIARY POWERS.** (1)(a) The board of directors is responsible for the proper exercise of fiduciary powers by the trust company. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the trust company in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the trust company's fiduciary powers as it may consider proper to assign to such directors, officers, employees, or committees as it may designate.

(b) A fiduciary account may not be accepted without the prior approval of the board, or of the directors, officers, or committees to whom the board may have designated the performance of that responsibility.

(c) A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the trust company has investment responsibilities a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, all the assets held in or for each fiduciary account where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(2) All officers and employees taking part in the operation of the state trust institution shall be adequately bonded.

(3) Every qualified fiduciary subject to this section and exercising fiduciary powers in this state shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the trust company and its state trust institution.

(4)(a) The state trust institution may utilize personnel and facilities of other departments of the trust company or its affiliates, and other departments of the trust company may utilize the personnel and facilities of the state trust institution or its affiliates only to the extent not prohibited by law and as long as the separate identity of the state trust institution is preserved.

(b) Pursuant to a written agreement, a trust company exercising fiduciary powers may perform services related to the exercise of fiduciary powers for

another trust company or other entity, and may purchase services related to the exercise of fiduciary powers from another trust company or other entity.

(5) Fiduciary records shall be kept separate and distinct from other records of the trust company and maintained in compliance with section 315 of this act. All fiduciary records shall be kept and retained for such time as to enable the fiduciary to furnish such information or reports with respect thereto as may be required by the director.

(6) Every such fiduciary shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

**NEW SECTION. Sec. 356. AUDIT COMMITTEE.** A committee of directors, exclusive of any active officers of the trust company, shall at least once during each calendar year make suitable audits of the state trust institution or cause suitable audits to be made by auditors responsible only to the board of directors, and at such time shall ascertain whether the department has been administered in accordance with law, this section, and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

**NEW SECTION. Sec. 357. SHAREHOLDERS—ACTIONS AUTHORIZED WITHOUT MEETINGS—WRITTEN CONSENT.** (1) Any action required by this title to be taken at a meeting of the shareholders of a state trust company, or any action that may be taken at a meeting of such shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) The consent has the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or documents filed under this title.

**NEW SECTION. Sec. 358. DIRECTORS, COMMITTEES—ACTIONS AUTHORIZED WITHOUT MEETINGS—WRITTEN CONSENT.** (1) Unless otherwise provided by the articles of incorporation or bylaws, any action required by this title to be taken at a meeting of the directors of a state trust company, or any action which may be taken at any meeting of the directors or of a committee, may be taken without a meeting if consented to in writing or by electronic transmission, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent has the same effect as a unanimous vote.

(2) For purposes of this section, the term "electronic transmission" means any form of communication not involving the transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such recipient through an automated process.

**NEW SECTION. Sec. 359. DIRECTORS, COMMITTEES—MEETINGS AUTHORIZED BY CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT.** Except as may be otherwise restricted by the articles of incorporation or bylaws of a state trust company, members of its

board of directors or any committee designated by its board of directors may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence, in person, at a meeting.

**STATE TRUST COMPANIES—  
TRUST DEPOSITS AND COMMON TRUST FUNDS**

**NEW SECTION. Sec. 360.** GENERAL PROHIBITION ON DEPOSIT TAKING. Except as authorized by this chapter or other governing law, a trust company may not take or hold deposits of funds in this state unless:

- (1) It is authorized to do business in this state as a depository institution; and
- (2) Complies with all applicable federal and state laws and regulations respecting the taking and handling of monetary deposits.

**NEW SECTION. Sec. 361.** TRUST DEPOSITS AS A CLIENT INVESTMENT—SECURITY FUND. (1) The director may establish by rule a plan for the safe and sound deposit of trust funds by a state trust company with itself as an investment, if:

(a) The investment of the trust deposits is authorized in writing by the settlor or the beneficiary;

(b) The state trust company maintains as security for the trust deposits a separate fund of securities, which are permissible for trust investments, under control of a federal reserve bank or a clearing corporation, either in this state or elsewhere;

(c) The total market value of the security is at all times at least equal to the amount of the deposit;

(d) The separate fund is designated as security for trust deposits;

(e) The separate fund is maintained under the control of a bank or government agency; and

(f) The state trust company complies with such other terms and conditions as the director may establish by rule in the interest of safety and soundness and protection of the public.

(2) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (1) of this section as long as the required value is maintained.

(3) Income from the securities in the fund belongs to the state trust company.

**NEW SECTION. Sec. 362.** COMMON TRUST FUNDS. (1) Consistent with RCW 11.102.010, a state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(2) The director may adopt rules to administer and carry out this section and RCW 11.102.010, including but not limited to rules to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.

**STATE TRUST COMPANIES—  
PRUDENTIAL FIDUCIARY STANDARDS**

**NEW SECTION. Sec. 363. PRUDENTIAL FIDUCIARY STANDARDS.**

(1) Except to the extent federal preemption of state law is applicable in relation to trusts governed under the federal employment retirement income security act, a state trust company acting as a trustee or other fiduciary shall comply with all applicable provisions of this title and with chapters 11.97, 11.98, 11.100, 11.102, 11.104A, 11.106, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a charitable trust.

(2) The director has broad administrative authority to establish by rule or interpretation principles-based standards for examination, supervision, and enforcement of a state trust company by the department in relation to compliance with this title, including subsection (1) of this section.

**NEW SECTION. Sec. 364. FEE DETERMINATION.** (1) The compensation arrangement between a client and a trustee or any other fiduciary pursuant to this title shall be at arm's length and any compensation pursuant to such arrangement shall be a reasonable amount with respect to the services rendered.

(2) This section does not apply to arrangements not involving trust or client assets.

**NEW SECTION. Sec. 365. DISCLOSURE OF CONFLICTS OF INTEREST.** In addition to the provisions set out in RCW 11.98.078, if a conflict of interest may reasonably be expected to have a material adverse impact on the trustee's judgment in its provision of services to such client, the trustee must provide a reasonable disclosure of such conflict to such client.

**OUT-OF-STATE TRUST INSTITUTIONS**

**NEW SECTION. Sec. 366. TRUST BUSINESS AT A TRUST OFFICE.**

An out-of-state trust institution that meets the requirements of this chapter is not required to maintain a physical trust office in this state. An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may establish and maintain a new trust office in this state.

**NEW SECTION. Sec. 367. PREEXISTING APPROVED OUT-OF-STATE TRUST INSTITUTIONS.** Notwithstanding any other provision of this title, an out-of-state trust institution that complies with sections 368(1) and 402 of this act is exempt from the requirements of sections 369 and 370 of this act.

**NEW SECTION. Sec. 368. TRUST BUSINESS OF OUT-OF-STATE TRUST INSTITUTION—PREREQUISITE OF RECIPROCITY.** (1) Except as authorized by federal law or by another law of this state, an out-of-state trust institution shall not be permitted to engage in a trust business in this state on more favorable terms and conditions than the terms and conditions on which state trust companies incorporated under this title and savings banks engaged in trust business under RCW 32.08.140, 32.08.142, 32.08.210, and 32.08.215 are permitted to engage in trust business in such other state.

(2) The out-of-state trust institution may exercise additional powers and authorities that are authorized under the laws of its home state if the director

determines in writing that the exercise of the additional powers and authorities in this state will not threaten the safety and soundness of trust institutions in this state and serves the convenience and needs of Washington consumers.

**NEW SECTION. Sec. 369. REQUIREMENT OF NOTICE.** An out-of-state trust institution desiring to engage in trust business in this state shall provide, or cause its home state regulator to provide, written notice to the director of its intent to engage in trust business in this state, accompanied by:

(1) Satisfactory written evidence of a certificate of authority to engage in trust business in its home state, or equivalent, from its home state regulator;

(2) A copy of the resolution adopted by the board of directors of such out-of-state trust institution authorizing the out-of-state trust institution to engage in trust business in this state;

(3) Written evidence of compliance with the requirements of the director set forth in subsection (1) of this section; and

(4) A filing fee, if any, as prescribed by the director under authority of RCW 30.04.070 (as recodified by this act).

**NEW SECTION. Sec. 370. CONDITIONS FOR APPROVAL.** (1) Except as authorized by section 402 of this act, an out-of-state trust institution may not engage in trust business in this state unless:

(a) The out-of-state trust institution has confirmed in writing to the director that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state.

(b) The out-of-state trust institution has provided satisfactory evidence to the director of compliance with (i) any applicable requirements of chapter 23B.15 or 25.15 RCW and (ii) the applicable requirements of its home state regulator for engaging in trust business in both its home state and this state.

(c) The director, acting within sixty days after receiving notice under section 369 of this act, has certified to the home state regulator that the requirements of this chapter have been met and the notice has been approved or, if applicable, that any conditions imposed by the director pursuant to subsection (2) of this section have been satisfied.

(2) The out-of-state trust institution may commence engaging in trust business in this state on the sixty-first day after the date the director receives the notice unless the director specifies an earlier or later date.

(3) The period of review in subsection (2) of this section may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may engage in trust business in this state only on prior written approval by the director.

**NEW SECTION. Sec. 371. ADDITIONAL TRUST OFFICES.** An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices in this state to the same extent that a state trust company may establish or acquire additional offices in this state.

**NEW SECTION. Sec. 372. EXAMINATIONS OF OUT-OF-STATE TRUST INSTITUTIONS—PERIODIC REPORTS—COOPERATIVE AGREEMENTS—ASSESSMENT OF FEES.** (1) To the extent consistent with subsections (3), (4), and (5) of this section, the director may make such examinations and investigations of an out-of-state trust institution engaged in

trust business in this state as the director may deem necessary to determine whether the out-of-state trust institution is being operated and maintained in a safe and sound manner in a manner affecting this state. Unless otherwise prescribed by rule, the provisions of Title 30 RCW (as recodified by this act) applicable to examination or investigation of banks shall apply to such examinations or investigations of out-of-state trust institutions.

(2) The director may require periodic reports regarding any out-of-state trust institution engaged in trust business in this state. The required reports shall be provided by such out-of-state trust institution or by the home state regulator. Any reporting requirements prescribed by the director under this subsection shall be (a) consistent with the reporting requirements applicable to state trust companies and (b) appropriate for the purpose of enabling the director to carry out his or her responsibilities under this chapter.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other trust institution supervisory agency with respect to the periodic examination or other supervision of an out-of-state trust institution engaging in trust business in this state, and the director may accept the report of examination and report of investigation of such agency in lieu of conducting his or her own examination or investigation.

(4) The director may enter into contracts with any trust institution supervisory agency that has concurrent jurisdiction over an out-of-state trust institution engaged in trust business in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the director's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract to the extent permitted under Washington state law.

(5) The director may enter into joint examinations or joint enforcement actions with other trust institutions supervisory agencies having concurrent jurisdiction over any out-of-state trust institution engaged in trust business in this state or by a state trust company doing business in any host state.

(6) Notwithstanding any other provision of this section, the director may at any time take enforcement action independently if the director deems such actions to be necessary or appropriate to carry out his or her responsibilities under this title or to ensure compliance with the laws of this state. However, in the case of an out-of-state trust institution, the director shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(7) An out-of-state trust institution that engages in trust business in this state and which is subject to examination by the director under any cooperative agreement between the director and the home state of the out-of-state trust institution, may be subject to supervisory, examination, and other fees, under authority of such cooperative agreement, RCW 30.04.070 (as recodified by this act), and as may be specified by rule.

**NEW SECTION. Sec. 373.** ENFORCEMENT. (1) Consistent with the Washington administrative procedure act, chapter 34.05 RCW, and in the manner provided for enforcement action against a state trust company under this title, after notice and opportunity for hearing, the director may determine an out-of-state trust institution engaging in trust business in this state is in violation of

any provision of the laws of this state or is operating in an unsafe and unsound manner.

(2) The director shall have the authority to take all such enforcement actions as he or she would be empowered to take if the out-of-state trust institution were a state trust company, including but not limited to issuing an order temporarily or permanently prohibiting the out-of-state trust institution from engaging in trust business in this state.

(3) The director may make a written finding that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for engaging in trust business in this state pursuant to this chapter or section 402 of this act, which finding shall be effective on the date of issuance or such other date as the director shall determine.

(4) In cases involving extraordinary circumstances requiring immediate action, the director may issue a temporary order without advance notice or opportunity for hearing, subject to the out-of-state trust institution's right to petition for judicial review in the same manner as a state trust company under this title.

(5) The director will give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, will consult and cooperate with the home state regulator in pursuing and resolving such enforcement action.

**NEW SECTION. Sec. 374.** NOTICE OF SUBSEQUENT MERGER, CLOSING, ETC. Each out-of-state trust institution that maintains an office in this state pursuant to this chapter, or the home state regulator of such trust institution, shall give at least thirty days' prior written notice, or in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the director of:

(1) Any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal change in bank control act of 1978, 12 U.S.C. Sec. 1817(j), or the federal bank holding company act of 1956, 12 U.S.C. Sec. 1841 et seq., or any successor statutes thereto;

(2) Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

(3) The closing or disposition of any office in this state.

**NEW SECTION. Sec. 375.** FUNCTIONALLY UNREGULATED OUT-OF-STATE TRUST INSTITUTIONS. Notwithstanding any other provision of this chapter, an out-of-state trust institution engaging in trust business in this state, which is not an exempt person under section 306 of this act and which by reason of the laws of its home state is not subject to any supervision, examination, or other safety and soundness oversight by a home state regulator, shall be subject to all the requirements of a state trust company under this title.



**STATE TRUST COMPANIES—  
VOLUNTARY DISSOLUTION AND LIQUIDATION**

**NEW SECTION. Sec. 376. REQUIRED VOTE OF SHAREHOLDERS.** A state trust company may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative votes of its shareholders owning two-thirds of its stock or participation shares.

**NEW SECTION. Sec. 377. CORPORATE PROCEDURE.** Shareholder action to liquidate a state trust company shall be taken at a meeting of the shareholders or participants duly called by resolution of the board of directors or members, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder or participant, or in case of a shareholder's or participant's death, to such shareholder's or participant's legal representative or heirs at law, addressed to the shareholder's or participant's last known residence ten days previous to the date of such meeting. If stockholders or participants shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which such action shall have been taken, verified by the oath of the president and secretary, shall be transmitted to the director for approval.

**NEW SECTION. Sec. 378. AUTHORITY TO LIQUIDATE— PUBLICATION.** If the director approves the liquidation, the director shall issue to the state trust company a permit for such purpose. A permit shall not be issued by the director until the director is satisfied that provision has been made by the state trust company to satisfy and pay off all creditors. If not so satisfied, the director shall refuse to issue a permit, and is authorized to take possession of the state trust company and its assets and business, and hold the same and liquidate the state trust company in the manner provided in this title. When the director approves the voluntary liquidation of a state trust company, the directors of that state trust company shall cause to be published in a newspaper in the county in which the same is located, or if no newspaper is published in such county, then in a newspaper having a general circulation in such county, a notice that the state trust company is closing down its affairs and going into liquidation, and notify its creditors to present their claims for payment. Such notice shall be published once a week for four consecutive weeks.

**NEW SECTION. Sec. 379. EXAMINATION AND REPORTS.** When any state trust company is in process of voluntary liquidation, it is subject to examination by the director, and shall furnish such reports from time to time as may be called for by the director.

**NEW SECTION. Sec. 380. UNCLAIMED PROPERTY.** All unclaimed property remaining in the hands of a liquidated state trust company is subject to the provisions of chapter 11.08 RCW.

**NEW SECTION. Sec. 381. SELL OR TRANSFER OF PROPERTY.** Any state trust company may sell and transfer to any other trust institution, whether state or federally chartered, all of its assets of every kind upon such terms as may be agreed upon and approved by the director and by two-thirds vote of its board of directors or members. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and secretary, together with a copy of the contract of sale and transfer, shall be filed with the director.

Whenever voluntary liquidation shall be approved by the director or the sale and transfer of the assets of any state trust company shall be approved by the director, a certified copy of such approval, filed in the office of the secretary of state, shall authorize the cancellation of the charter of such state trust company, subject, however, to its continued existence, as provided by this title and the general law relative to corporations.

### STATE TRUST COMPANIES— INVOLUNTARY DISSOLUTION AND LIQUIDATION

**NEW SECTION. Sec. 382.** WHEN DIRECTOR MAY TAKE POSSESSION. (1) After the expiration of thirty days from the director's written notice to correct an unsafe condition of the state trust company, the director may take possession of the business and property of a state trust company to which this title is applicable whenever it appears that the state trust company:

- (a) Has violated the terms of its certificate of authority or any laws applicable thereto;
- (b) Is conducting its business in an unauthorized or unsafe manner;
- (c) Is in an unsafe or unsound condition to transact its business;
- (d) Has an impairment of its capital;
- (e) Has become otherwise insolvent;
- (f) Has neglected or refused to comply with the terms of a duly issued lawful order of the director;
- (g) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the director;
- (h) Through its officers, has refused to be examined upon oath regarding its affairs; or
- (i) Has made a voluntary assignment of its assets to trustees.

(2) Notwithstanding the notice requirement in subsection (1) of this section, the director may without notice seize and take immediate possession of a state trust company if it appears to the director that the conditions of the state trust company are so hazardous that they pose an imminent threat to the general public or the interests of the state trust company's clients.

**NEW SECTION. Sec. 383.** MUTUAL CONSENT TO DISSOLUTION AND LIQUIDATION. If the director consents, any state trust company may voluntarily place its assets and business under the control of the director for liquidation by a resolution of a majority of its directors or members upon notice to the director. Upon taking possession of the state trust company, the director, or duly appointed agent, shall retain possession thereof until the state trust company is authorized by the director to resume business or until the affairs of the state trust company are fully liquidated as provided in this chapter. A state trust company shall not make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the director, as provided in this section. Whenever any state trust company for any reason suspends operations for any length of time, the state trust company shall, immediately upon such suspension of operations, be deemed in the possession of the director and subject to liquidation under this chapter.

**NEW SECTION. Sec. 384.** OTHER REQUIREMENTS FOR INVOLUNTARY DISSOLUTION AND LIQUIDATION. (1) To the greatest extent consistent with this title, the standards, terms and conditions, and procedures for involuntary dissolution and liquidation of a state trust company shall conform to the provisions of chapter 30.44 RCW (as recodified by this act), excluding RCW 30.44.010, 30.44.020, and 30.44.270 (as recodified by this act) related to involuntary dissolution and liquidation of a bank, including the right to judicially contest the director's action as provided in RCW 30.44.030 (as recodified by this act).

(2) The director may by rule establish a uniform set of procedures consistent with this chapter.

### **STATE TRUST COMPANIES— SUPERVISORY DIRECTION AND CONSERVATORSHIP**

**NEW SECTION. Sec. 385.** SUPERVISORY DIRECTION. (1) If upon examination or at any other time it appears to the director that a state trust company is in an unsafe condition and its condition is such as to render the continuance of its business hazardous to the public or to its clients, or if the state trust company appears to have exceeded its powers or has failed to comply with the law, or if the state trust company gives its consent, then the director shall upon his or her determination (a) notify the state trust company of his or her determination, (b) furnish to the state trust company a written list of the director's requirements to abate his or her determination, and (c) if the director makes further determination to directly supervise, he or she shall notify the state trust company that it is under the supervisory direction of the director and that the director is invoking the provisions of this chapter. If placed under supervisory direction the state trust company shall comply with the lawful requirements of the director within such time as provided in the notice of the director, subject however, to the provisions of this chapter. If the state trust company fails to comply within such time the director may appoint a conservator.

(2) To the greatest extent consistent with this title, the standards, terms and conditions, and procedures of supervisory direction, and abatement therefrom, shall be consistent with chapter 30.46 RCW (as recodified by this act) related to supervisory direction of banks.

(3) The director may establish rules related to supervisory direction consistent with this section.

**NEW SECTION. Sec. 386.** CONSERVATORSHIP. (1) After the period of supervisory direction specified by the director for compliance, if he or she determines that the state trust company has failed to comply with the lawful requirements imposed, the director may appoint a conservator, who shall immediately take charge of such state trust company and all of its property, books, records, and effects.

(2) The conservator shall conduct the business of the state trust company and take such steps toward the removal of the causes and conditions which have necessitated such order, as the director may direct.

(3) During the pendency of the conservatorship, the conservator shall make such reports to the director from time to time as may be required by the director,

and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of the state trust company, including claims or causes of actions belonging to or which may be asserted by the state trust company, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against the state trust company which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby.

(4) The director, or any newly appointed assistant, may be appointed to serve as conservator.

(5) If the director, however, is satisfied that the state trust company is not in condition to continue business in the interest of its clients under the conservator, the director may proceed with appropriate remedies provided by other provisions of this title.

(6) The powers, duties, privileges, and immunities of a conservator appointed under this chapter shall be subject to all other applicable provisions of this title related to appointment of conservators and to all other provisions of chapter 30.46 RCW (as recodified by this act) related to the appointment of and service by conservators in relation to banks.

(7) The director may establish rules related to conservatorship of state trust companies consistent with this section.

### **STATE TRUST COMPANIES— MERGER, CONSOLIDATION, AND CONVERSION**

**NEW SECTION. Sec. 387.** APPLICABILITY OF CHAPTER. This chapter applies to any merger or consolidation in which a state trust company is a party.

**NEW SECTION. Sec. 388.** DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Merger" includes consolidation.

(2) "Merging trust company" means a party to a merger.

(3) "Resulting trust company" means the trust company resulting from a merger.

(4) "Vote of stockholders" or "vote of classes of stockholders" means only a vote of those entitled to vote under the terms of such shares.

**NEW SECTION. Sec. 389.** APPROVAL BY DIRECTOR—REQUIRED. Upon approval by the director, trust companies may be merged to result in a trust company.

**NEW SECTION. Sec. 390.** CONTENTS OF MERGER AGREEMENT—APPROVAL BY EACH BOARD OF DIRECTORS—REQUIREMENTS FOR DIRECTOR'S APPROVAL. (1) The board of directors of each merging trust company shall, by a majority of the entire board, approve a merger agreement that must contain:

(a) The name of each merging trust company and location of each office;

(b) With respect to the resulting trust company, (i) the name and location of the principal and other offices; (ii) the name and mailing address of each director to serve until the next annual meeting of the stockholders; (iii) the name and

mailing address of each officer; (iv) the amount of capital, the number of shares, and the par value, if any, of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the exchange of shares of the merging trust companies for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the director and the stockholders of each merging trust company;

(e) Provisions governing the manner of disposing of the shares of the resulting trust company if the shares are to be issued in the transaction and are not taken by dissenting shareholders of merging trust companies; and

(f) Any other provisions the director requires to discharge his or her duties with respect to the merger.

(2) After approval by the board of directors of each merging trust company, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board. Within sixty days after receipt by the director of the merger agreement and resolutions, the director shall approve or disapprove of the merger agreement, and if no action is taken, the agreement is deemed approved. The director shall approve the agreement if it appears that the:

(a) Resulting trust company meets the requirements of state law as to the formation of a new trust company;

(b) Agreement provides an adequate capital in relation to the deposit liabilities, if any, of the resulting trust company and its other activities which are to continue or are to be undertaken;

(c) Agreement is fair; and

(d) Merger is not contrary to the public interest.

If the director disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging trust company to amend the merger agreement to obviate such objections.

**NEW SECTION. Sec. 391. APPROVAL BY STOCKHOLDERS—VOTING—NOTICE.** (1) To be effective, a merger that is to result in a trust company must be approved by the stockholders of each merging trust company by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action. This vote shall constitute the adoption of the charter and bylaws of the resulting trust company, including the amendments in the merger agreement.

(2) Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging trust company is located, at least once each week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each stockholder of record of each merging trust company at the address on the books of the stockholder's trust company. No notice of publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan.

**NEW SECTION. Sec. 392.** EFFECTIVE DATE OF MERGER—CERTIFICATE OF MERGER. (1) A merger that is to result in a trust company shall, unless a later date is specified in the agreement, become effective after the filing with and upon the approval of the director of the executed agreement together with copies of the resolutions of the stockholders of each merging trust company approving it, certified by the trust company's president or a vice president and a secretary. The charters of the merging trust companies, other than the resulting trust company, shall immediately after that automatically terminate.

(2) The director shall immediately after that issue to the resulting trust company a certificate of merger specifying the name of each merging trust company and the name of the resulting trust company. The certificate shall be conclusive evidence of the merger and of the correctness of all proceedings regarding the merger in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging trust companies is held.

**NEW SECTION. Sec. 393.** RESULTING TRUST COMPANY—PROPERTY, RIGHTS, POWERS, AND DUTIES. (1) A resulting trust company is the same business and corporate entity as each merging trust company with all property, rights, powers, and duties of each merging trust company, except as affected by state law and by the charter and bylaws of the resulting trust company. A resulting trust company has the right to use the name of any merging trust company whenever it can do any act under such name more conveniently.

(2) Any reference to a merging trust company in any writing, whether executed or taking effect before or after the merger, is a reference to the resulting trust company if not inconsistent with the other provisions of that writing.

**NEW SECTION. Sec. 394.** DISSENTING SHAREHOLDERS—MAY RECEIVE VALUE IN CASH—APPRAISAL. (1) The owner of shares of a trust company that were voted against a merger to result in a trust company shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting trust company at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of the shares shall be determined, as of the date of the stockholders' meeting approving the merger, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the resulting trust company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the director shall cause an appraisal to be made.

(2) The dissenting shareholders shall bear, on a pro rata basis based on number of dissenting shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the resulting trust company shall bear the cost of its appraisal and one-half of the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that appraisal shall be borne equally by the dissenting shareholders and the resulting trust company, with the dissenting shareholders sharing their half of the cost on a pro rata basis based on number of dissenting shares owned.

(3) The resulting trust company may fix an amount which it considers to be not more than the fair market value of the shares of a merging trust company at the time of the stockholders' meeting approving the merger, that it will pay dissenting shareholders of the trust company entitled to payment in cash. The amount due under an accepted offer or under the appraisal shall constitute a debt of the resulting trust company.

**NEW SECTION. Sec. 395. VALUATION OF ASSETS—BOOKS OF MERGING TRUST COMPANY.** Without approval by the director, no asset shall be carried on the books of the resulting trust company at a valuation higher than that on the books of the merging trust company at the time of its last examination by a state trust examiner before the effective date of the merger or conversion.

**NEW SECTION. Sec. 396. SALE OF ASSETS.** (1) The board of a state trust company, with the director's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder or participant approval if the director finds:

(a) The interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company; and

(b) The sale is in the best interest of the state trust company's clients and creditors.

(2) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(a) All of the state trust company's liabilities to clients and depositors;

(b) All of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(c) Obligations incurred by the director arising out of the supervision or sale of the state trust company; and

(d) Fees and assessments due the department.

(3) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(4) This section does not affect the director's authority to take action under another law.

(5) The sale by a trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is governed by the voluntary dissolution and liquidation provisions of chapter 30.44 RCW (as recodified by this act).

## **PRIVATE TRUSTS AND PRIVATE TRUST COMPANIES**

**NEW SECTION. Sec. 397. DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply to the provisions of this chapter.

(1) "Change of control" means to transfer or sell control of a private trust or private trust company to a person or persons other than family members.

(2) "Common ancestor" has the same meaning as an individual referred to as a common ancestor in the internal revenue code, 26 U.S.C. Sec. 1361(c)(1)(B)(ii), and excludes an individual who, on an applicable date, is more

than six generations removed from the youngest generation of shareholders or holders of beneficial interests in a private trust company.

(3) "Family member" means an individual who is a common ancestor, a lineal descendant of such common ancestor, or a spouse or former spouse of such common ancestor or such lineal descendant.

(4) "Private trust" means a trust created and maintained pursuant to the Washington trust act, chapter 11.98 RCW, or the laws of another state or foreign jurisdiction, in which:

(a) The trustee is a person who does not hold itself out to the general public as being engaged in trust business; and

(b) Neither the trust nor the trustee, in the capacity of trustee for the private trust, transacts business with the general public.

(5) "Private trust company" means a company acting as a private trust.

(6) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent owned or controlled by one or more family members.

**NEW SECTION. Sec. 398. PRIVATE TRUSTS AND PRIVATE TRUST COMPANIES EXEMPT—EXCEPTION FOR CHANGE OF CONTROL.** (1) A private trust or private trust company is exempt from the requirement of a certificate of authority or regulation under this title.

(2) Notwithstanding subsection (1) of this section, a transfer or change of control of a private trust or private trust company to a person or persons other than family members constitutes unauthorized trust activity unless the resulting private trust company is a trust institution authorized to do business in this state.

**NEW SECTION. Sec. 399. CONVERSION TO PUBLIC TRUST COMPANY.** A private trust or private trust company which seeks to convert to one transacting business with the general public in this state must apply for and obtain a certificate of authority as a state trust company under chapter 30B.—RCW (sections 321 through 332 of this act) or a federal charter or charter from another state which would permit it to conduct trust business and fiduciary activities in this state without engaging in unauthorized trust activity.

**NEW SECTION. Sec. 400. OTHER EXEMPTIONS NOT AFFECTED BY CHAPTER.** The provisions of this chapter do not affect the exemptions for persons acting pursuant to section 306 of this act.

**EFFECT ON PREEXISTING TRUST COMPANIES AND TRUST BUSINESSES**

**NEW SECTION. Sec. 401. TRUST COMPANIES UNDER FORMER TITLE 30 RCW.** Trust companies under Title 30 RCW, as it existed on the effective date of this section, shall automatically succeed to and be subject to all powers and authorities, rights and obligations, privileges and immunities, and discretions of a state trust company under this title.



**NEW SECTION. Sec. 402. PREEXISTING APPROVED OUT-OF-STATE TRUST INSTITUTIONS.** (1) An out-of-state trust institution that has, prior to the effective date of this section, obtained approval from the director under authority of Title 30 RCW, as it existed on the effective date of this section, to engage in trust business in this state and has continuously since the date of such approval held itself out to the public as engaging in trust business in this state, shall be exempt from the requirement of notice to or obtaining approval from the director pursuant to chapter 30B.— RCW (sections 366 through 375 of this act).

(2) For purposes of this section, the term "director" includes the former office of the supervisor of banks that merged into the department under authority of chapter 43.320 RCW.

(3) For purposes of this section, satisfactory evidence of approval from the director may be established only by written evidence that the director gave his or her approval prior to the effective date of this section in the form of a certificate of authority, declaration of reciprocity between this state and the home state of the out-of-state trust institution, or the equivalent. Authorization from the secretary of state to transact business in this state as a foreign corporation or foreign limited liability company is not by itself satisfactory evidence of such approval from the director.

(4) For purposes of this section, an out-of-state trust institution with satisfactory evidence of the director's approval to engage in trust business prior to the effective date of this section is presumed to have:

(a) Complied with section 370(1) of this act; and

(b) Continuously held itself out to the public as engaging in trust business in this state since the date of the director's approval by demonstrating that it has maintained uninterrupted and without lapse registration with the secretary of state as a foreign corporation under chapter 23B.15 RCW or foreign limited liability company under chapter 25.15 RCW.

## CONSTRUCTION

**NEW SECTION. Sec. 403. CONTINUATION OF EXISTING LAW.** The provisions of this title, insofar as they are substantially the same as statutory provisions repealed by this act and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

**NEW SECTION. Sec. 404. TITLE, CHAPTER, SECTION HEADINGS NOT PART OF LAW.** Title headings, chapter or subchapter headings, and section or subsection headings as used in this title do not constitute any part of the law.

**NEW SECTION. Sec. 405. 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.

**NEW SECTION. Sec. 406. PRIOR INVESTMENTS OR TRANSACTIONS NOT AFFECTED.** This title does not affect the legality of investments, made prior to January 5, 2015, or of transactions had before

January 5, 2015, pursuant to any provisions of law in force when such investments were made or transactions had.

### SAVINGS BANK ACT

NEW SECTION. Sec. 501. A new section is added to chapter 32.04 RCW to read as follows:

This title may be known and cited as the Washington savings bank act.

**Sec. 502.** RCW 32.08.210 and 1994 c 92 s 320 are each amended to read as follows:

(1) A savings bank has the powers and authorities to engage in trust business that a state commercial bank authorized under RCW 30.08.150 (as recodified by this act) and subject also to the requirements and conditions for engaging in trust business set forth in this section.

(2) A mutual savings bank shall have the power to act as trustee under:

~~((1))~~ (a) A trust established by an inter vivos trust agreement or under the will of a deceased person.

~~((2))~~ (b) A trust established in connection with any collective bargaining agreement or labor negotiation wherein the beneficiaries of the trust include the employees concerned under the agreement or negotiation, or a trust established in connection with any pension, profit sharing, or retirement benefit plan of any corporation, partnership, association, or individual, including but not limited to retirement plans established pursuant to the provisions of the act of congress entitled "Self-Employed Individuals Tax Retirement Act of 1962", as now constituted or hereafter amended, or plans established pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", as now constituted or hereafter amended.

(3) A mutual savings bank may be appointed to and accept the appointment of personal representative of the last will and testament, or administrator with will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of minors ~~((and))~~, incompetent persons, and ~~((disabled))~~ persons with a disability.

(4) The restrictions, limitations and requirements in Title 30 RCW (as recodified by this act) shall apply to a mutual savings bank exercising the powers granted under this section insofar as the restrictions, limitations, and requirements relate to exercising the powers granted under this section. The incidental trust powers to act as agent in the management of trust property and the transaction of trust business in Title 30 RCW (as recodified by this act) shall apply to a mutual savings bank exercising the powers granted under this section insofar as the incidental powers relate to exercising the powers granted under this section.

(5) Before engaging in trust business, a mutual savings bank shall apply to the director on such form as he or she shall determine and pay the same fee as required for a state bank to engage in trust business. In considering such application the director shall ascertain from the best source of information at his or her command and by such investigation as he or she may deem necessary whether the management and personnel of the mutual savings bank are such as to command confidence and warrant belief that the trust business will be adequately and efficiently conducted in accordance with law, whether the

resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed trust business and whether the resources of the mutual savings bank are sufficient to support the conduct of such trust business, and that the mutual savings bank has and maintains, in addition to its guaranty fund, undivided profits against which the depositors have no prior claim in an amount not less than would be required of a state bank or trust company, which undivided profits shall be eligible for investment in the same manner as the guaranty fund of a mutual savings bank. Within sixty days after receipt of such application, the director shall either approve or refuse the same and forthwith return to the mutual savings bank a copy of the application upon which his or her decision has been endorsed. The director shall not be required to approve or refuse an application until thirty days after any appropriate approval has been obtained from a federal regulatory agency. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. A mutual savings bank shall not use the word "trust" in its name, but may use the word "trust" in its business or advertising.

### SAVINGS ASSOCIATION ACT

NEW SECTION. **Sec. 601.** A new section is added to chapter 33.04 RCW to read as follows:

This title may be known and cited as the Washington savings association act.

**Sec. 602.** RCW 33.12.010 and 1994 c 92 s 435 are each amended to read as follows:

An association shall have the same capacity to act as possessed by natural persons. An association has authority to perform such acts as are necessary or proper to accomplish its purposes.

In addition to any other power an association may have, an association has authority:

- (1) To have and alter a corporate seal;
- (2) To continue as an association for the time limited in its articles of incorporation or, if no such time limit is specified, then perpetually;
- (3) To sue or be sued in its corporate name;
- (4) To acquire, hold, sell, dispose of, pledge, mortgage, or encumber property, as its interests and purposes may require;
- (5) To conduct business in this state and elsewhere as may be permitted by law and, to this end, to comply with any law, regulation, or other requirements incident thereto;
- (6) To acquire capital in the form of deposits, shares, or other accounts for fixed, minimum or indefinite periods of time as are authorized by its bylaws, and may issue such passbooks, statements, time certificates of deposit, or other evidence of accounts;
- (7) To pay interest;
- (8) To charge reasonable service fees for services provided as part of its business;

(9) To borrow money and to pledge, mortgage, or hypothecate its properties and securities in connection therewith;

(10) To collect or protest promissory notes or bills of exchange owned or held as collateral by the association;

(11) To let vaults, safes, boxes, or other receptacles for the safekeeping or storage of personal property, subject to the laws and regulations applicable to and with the powers possessed by safe deposit companies; and to act as escrow holder;

(12) To act as fiscal agent for the United States of America; to purchase, own, vote, or sell stock in, or act as fiscal agent for any federal home loan bank, the federal housing administration, home owners' loan corporation, or other state or federal agency, organized under the authority of the United States or of the state of Washington and authorized to loan to or act as fiscal agent for associations or to insure savings accounts or mortgages; and in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated by such federal or state agency and to execute any contracts and pay any charges in connection therewith;

(13) To procure insurance of its mortgages and of its accounts from any state or federal corporation or agency authorized to write such insurance and, in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated and to execute any contracts and pay any premiums required in connection therewith;

(14) To loan money and to sell any of its notes or other evidences of indebtedness, together with the collateral securing the same;

(15) To make, adopt, and amend bylaws for the management of its property and the conduct of its business;

(16) To deposit moneys and securities in any other association or any bank or savings bank or other like depository;

(17) To dissolve and wind up its business;

(18) To collect or compromise debts due to it and, in so doing, to apply to the indebtedness the accounts of the debtors, and to receive, as collateral or otherwise, other securities, property or property rights of any kind or nature;

(19) To become a member of, deal with, or make reasonable payments or contribution to any organization to the extent that such organization assists in furthering or facilitating the association's purposes, powers or community responsibilities, and to comply with any reasonable conditions of eligibility;

(20) To sell money orders, travelers checks and similar instruments as agent for any organization empowered to sell such instruments through agents within this state and to receive money for transmission through a federal home loan bank;

(21) To service loans and investments for others;

(22) To sell and to purchase mortgages or other loans, including participating interests therein;

(23) To use abbreviations, words or symbols in connection with any document of any nature and on checks, proxies, notices and other instruments which abbreviations, words, or symbols shall have the same force and legal effect as though the respective words and phrases for which they stand were set forth in full for the purposes of all statutes of the state and all other purposes;

(24) To conduct a trust business under rules adopted by the director pursuant to chapter 34.05 RCW; (~~and~~)

(25) To exercise the powers and authorities of a state commercial bank to engage in trust business under RCW 30.08.150 (as recodified by this act) upon application to and approval by the director and subject to requirements and conditions that the director may establish by rule; and

(26) To exercise, by and through its board of directors and duly authorized officers and agents, all such incidental powers as may be necessary to carry on the business of the association.

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere by this title.

### TITLE 30B CODIFICATION

**NEW SECTION. Sec. 701.** The following is applicable to Title 30B RCW as authorized by this act:

(1) Sections 301 through 320 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.04 RCW;

(2) Sections 321 through 332 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.08 RCW;

(3) Sections 333 through 345 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.10 RCW;

(4) Sections 346 through 359 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.12 RCW;

(5) Sections 360 through 362 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.20 RCW;

(6) Sections 363 through 365 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.24 RCW;

(7) Sections 366 through 375 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.38 RCW;

(8) Sections 376 through 381 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.44A RCW;

(9) Sections 382 through 384 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.44B RCW;

(10) Sections 385 and 386 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.46 RCW;

(11) Sections 387 through 396 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.53 RCW;

(12) Sections 397 through 400 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.64 RCW;

(13) Sections 401 and 402 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.72 RCW; and

(14) Sections 403 through 406 of this act constitute a new chapter in Title 30B RCW to be codified as chapter 30B.98 RCW.

Passed by the Senate February 12, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

CHAPTER 38

[Senate Bill 6299]

PRENATAL NUTRITION EDUCATION

AN ACT Relating to prenatal nutrition education; and adding a new section to chapter 43.70 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 43.70 RCW to read as follows:

The department shall develop and make available educational resources for pregnant women regarding prenatal nutrition best practices to promote infant health. The educational resources may include, but are not limited to, courses delivered in-person or electronically and pamphlets printed on paper or made available on the department's web site. The educational resources are intended to provide pregnant women knowledge of healthy foods and essential daily nutrients needed to promote infant growth and development.

Passed by the Senate February 13, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

CHAPTER 39

[Senate Bill 6419]

MEDICAL CARE ACCESS—BORDER COMMUNITIES

AN ACT Relating to medicaid programs and expanding access to care in border communities; 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 74.09 RCW to read as follows:

(1) The legislature finds that the authority and the department purchase or contract for the delivery of medicaid programs, including medical services with the managed care plans under this chapter, mental health services with regional support networks or other contractors under chapter 71.24 RCW, chemical dependency services under chapters 74.50 and 70.96A RCW, and long-term care services under chapter 74.39A RCW.

(2) The authority and department must collaborate and seek opportunities to expand access to care for enrollees in the medicaid programs identified in subsection (1) of this section living in border communities that may require contractual agreements with providers across the state border when care is appropriate, available, and cost-effective.

(3) All authority and department contracts for medicaid services issued or renewed after July 1, 2014, must include provisions that allow for care to be accessed cross-border ensuring timely access to necessary care, including inpatient and outpatient services. The contracts must include reciprocal arrangements that allow Washington, Oregon, and Idaho border residents to access care when care is appropriate, available, and cost-effective.

(4) The agencies must jointly report to the health care committees and fiscal committees of the legislature by November 1, 2014, with an update on the

contractual opportunities and the anticipated impacts on patient access to timely care, the impact on the availability of inpatient and outpatient services, and the fiscal implications for the medicaid programs.

Passed by the Senate February 12, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 40

[Substitute Senate Bill 6453]

### AREA AGENCIES ON AGING—HOME CARE AGENCIES—ELECTRONIC TIMEKEEPING

AN ACT Relating to verification of hours worked through electronic timekeeping by area agencies on aging and home care agencies; and amending RCW 74.39A.095 and 74.39A.325.

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

**Sec. 1.** RCW 74.39A.095 and 2012 c 164 s 507 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 has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets until the state electronic payment system is available for individual providers to record their hours at which time a verification of worker time sheets may be done electronically;

(c) Monitoring the consumer's plan of care to 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) Reassessing and reauthorizing services;

(e) Monitoring of individual provider performance; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider. Individual providers who are hired after January 7, 2012, are subject to background checks under RCW 74.39A.056.

(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 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. 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 74.39A.325 and 2009 c 571 s 2 are each amended to read as follows:

(1) (~~Beginning July 1, 2010,)~~ The department shall not pay a home care agency licensed under chapter 70.127 RCW for in-home personal care or respite services provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the home care agency does not verify agency employee hours by electronic timekeeping except in circumstances where electronic verification is not possible as verified by the home care agency.

(2) For purposes of this section, "electronic timekeeping" means an electronic, verifiable method of recording an employee's presence ~~(in)~~ with the client~~(s—home)~~ at the beginning and end of the employee's client visit ~~(workday)~~ shift.

Passed by the Senate February 18, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 17, 2014.

Filed in Office of Secretary of State March 17, 2014.

## CHAPTER 41

[House Bill 2119]

### STATE WATERFALL—PALOUSE FALLS

AN ACT Relating to designating Palouse falls as the state waterfall; adding a new section to chapter 1.20 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The tourist industry is a vital part of the state's economy. Palouse falls has visitors numbering averaging over eighty thousand to one hundred thousand per year. The falls drop one hundred ninety-eight feet identifying them as the last remaining year-round waterfalls left by the ice age floods.

(2) Palouse falls was named sixth on the top ten best United States waterfalls list, tenth on the list of the world's most amazing waterfalls, and the site of the world record breaking kayak drop.

(3) Palouse falls surrounding area is the location for the oldest documented remains found in the western hemisphere; home of the Palouse Native American culture; birthplace of the Appaloosa horse; and documented in Lewis and Clark's journals.

**NEW SECTION. Sec. 2.** A new section is added to chapter 1.20 RCW to read as follows:

Palouse falls is hereby designated as the official waterfall of the state of Washington.

Passed by the House February 12, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 18, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 42

[House Bill 2208]

## ALTERNATIVE PUBLIC WORKS—HEAVY CIVIL CONSTRUCTION PROJECTS

AN ACT Relating to heavy civil construction projects; amending RCW 39.10.210, 39.10.280, 39.10.340, 39.10.350, 39.10.360, 39.10.370, and 39.10.390; and reenacting and amending RCW 43.131.408.

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

**Sec. 1.** RCW 39.10.210 and 2013 c 222 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) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager, and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

(2) "Board" means the capital projects advisory review board.

(3) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.

(4) "Committee," unless otherwise noted, means the project review committee.

(5) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(6) "Disadvantaged business enterprise" means any business entity certified with the office of minority and women's business enterprises under chapter 39.19 RCW.

(7) "General contractor/construction manager" means a firm with which a public body has selected to provide services during the design phase and negotiated a maximum allowable construction cost to act as construction manager and general contractor during the construction phase.

(8) "Job order contract" means a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

(9) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

(10) "Maximum allowable construction cost" means the maximum cost of the work to construct the project including a percentage for risk contingency, negotiated support services, and approved change orders.

(11) "Negotiated support services" means items a general contractor would normally manage or perform on a construction project including, but not limited to surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal, and that are negotiated as part of the maximum allowable construction cost.

(12) "Percent fee" means the percentage amount to be earned by the general contractor/construction manager as overhead and profit.

(13) "Public body" means any general or special purpose government in the state of Washington, including but not limited to state agencies, institutions of

higher education, counties, cities, towns, ports, school districts, and special purpose districts.

(14) "Public works project" means any work for a public body within the definition of "public work" in RCW 39.04.010.

(15) "Small business entity" means a small business as defined in RCW 39.26.010.

(16) "Total contract cost" means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, and the percent fee on the negotiated maximum allowable construction cost.

(17) "Total project cost" means the cost of the project less financing and land acquisition costs.

(18) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.

(19) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract.

(20) "Heavy civil construction project" means a civil engineering project, the predominant features of which are infrastructure improvements.

**Sec. 2.** RCW 39.10.280 and 2013 c 222 s 8 are each amended to read as follows:

(1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, ~~((and its))~~ the public body's intended use of alternative contracting procedures, and, if applicable, a declaration that the public body has elected to procure the project as a heavy civil construction project.

(2) To approve a proposed project, the committee shall determine that:

(a) The alternative contracting procedure will provide a substantial fiscal benefit or the use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules;

(b) The proposed project meets the requirements for using the alternative contracting procedure as described in RCW 39.10.300 or 39.10.340;

(c) The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget;

(d) For design-build projects, public body personnel or consultants are knowledgeable in the design-build process and are able to oversee and administer the contract; and

(e) The public body has resolved any audit findings related to previous public works projects in a manner satisfactory to the committee.

(3) The committee shall, if practicable, make its determination at the public meeting during which a submittal is reviewed. Public comments must be considered before a determination is made.

(4) Within ten business days after the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site. If the committee fails to make a written determination within ten business days of the public meeting, the request of the public body to use the alternative contracting procedure on the requested project shall be deemed approved.

(5) Failure of the committee to meet within sixty calendar days of a public body's application to use an alternative contracting procedure on a project shall be deemed an approval of the application.

**Sec. 3.** RCW 39.10.340 and 2013 c 222 s 12 are each amended to read as follows:

Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where at least one of the following is met:

(1) Implementation of the project involves complex scheduling, phasing, or coordination;

(2) The project involves construction at an occupied facility which must continue to operate during construction;

(3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;

(4) The project encompasses a complex or technical work environment;

~~((or))~~ (5) The project requires specialized work on a building that has historic significance; or

(6) The project is, and the public body elects to procure the project as, a heavy civil construction project. However, no provision of this chapter pertaining to a heavy civil construction project applies unless the public body expressly elects to procure the project as a heavy civil construction project.

**Sec. 4.** RCW 39.10.350 and 2007 c 494 s 302 are each amended to read as follows:

(1) A public body using the general contractor/construction manager contracting procedure shall provide for:

(a) The preparation of appropriate, complete, and coordinated design documents;

(b) Confirmation that a constructability analysis of the design documents has been performed prior to solicitation of a subcontract bid package;

(c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;

(e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects, critical path method schedule review and analysis, and the administration, pricing, and negotiation of change orders;

(f) Contract documents that include alternative dispute resolution procedures to be attempted before the initiation of litigation;

(g) Contract documents that: (i) Obligate the public owner to accept or reject a request for equitable adjustment, change order, or claim within a specified time period but no later than sixty calendar days after the receipt by the public body of related documentation; and (ii) provide that if the public owner does not respond in writing to a request for equitable adjustment, change order, or claim within the specified time period, the request is deemed denied;

(h) Submission of project information, as required by the board; and

(i) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body using the general contractor/construction manager contracting procedure may include an incentive clause for early completion, cost savings, or other performance goals if such incentives are identified in the request for proposals. No incentives granted may exceed five percent of the maximum allowable construction cost. No incentives may be paid from any contingency fund established for coordination of the construction documents or coordination of the work.

(3) If the construction is completed for less than the maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the construction is completed for more than the maximum allowable construction cost, the additional cost is the responsibility of the general contractor/construction manager.

(4) If the public body and the general contractor/construction manager agree, in writing, on a price for additional work, the public body must issue a change order within thirty days of the written agreement. If the public body does not issue a change order within the thirty days, interest shall accrue on the dollar amount of the additional work satisfactorily completed until a change order is issued. The public body shall pay this interest at a rate of one percent per month.

(5) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract.

**Sec. 5.** RCW 39.10.360 and 2013 c 222 s 13 are each amended to read as follows:

(1) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(2) Contracts for the services of a general contractor/ construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure including, if applicable, a clear statement that the public body is

electing to procure the project as a heavy civil construction project, in which case the solicitation must additionally:

(i) Indicate the minimum percentage of the cost of the work to construct the project that will constitute the negotiated self-perform portion of the project;

(ii) Indicate whether the public body will allow the price to be paid for the negotiated self-perform portion of the project to be deemed a cost of the work to which the general contractor/construction manager's percent fee applies; and

(iii) Require proposals to indicate the proposer's fee for the negotiated self-perform portion of the project;

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors, the relative weight of factors, and protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3)(a) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:

(i) Ability of the firm's professional personnel;

(ii) The firm's past performance in negotiated and complex projects;

(iii) The firm's ability to meet time and budget requirements;

(iv) The scope of work the firm proposes to self-perform and its ability to perform that work;

(v) The firm's proximity to the project location;

(vi) Recent, current, and projected workloads of the firm; and

(vii) The firm's approach to executing the project.

(b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a proposer, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(6) Public bodies may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

**Sec. 6.** RCW 39.10.370 and 2007 c 494 s 304 are each amended to read as follows:

(1) The maximum allowable construction cost shall be used to establish a total contract cost for which the general contractor/construction manager shall provide a performance and payment bond. The maximum allowable construction cost shall be negotiated between the public body and the selected firm when the construction documents and specifications are at least ninety percent complete.

(2) Major bid packages may be bid in accordance with RCW 39.10.380 before agreement on the maximum allowable construction cost between the public body and the selected general contractor/construction manager. The general contractor/construction manager may issue an intent to award to the responsible bidder submitting the lowest responsive bid.

(3) The public body may, at its option, authorize the general contractor/construction manager to proceed with the bidding and award of bid packages and construction before receipt of complete project plans and specifications. Any contracts awarded under this subsection shall be incorporated in the negotiated maximum allowable construction cost.

(4) The total contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the negotiated support services, and the percent fee on the negotiated maximum allowable construction cost. Negotiated support services may be included in the specified general conditions at the discretion of the public body.

(5) If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated.

(6) If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated.

(7) As part of the negotiation of the maximum allowable construction cost under subsection (1) of this section, on a project that the public body has elected to procure as a heavy civil construction project:

(a) The general contractor/construction manager shall submit a proposed construction management and contracting plan, which must include, at a minimum:

(i) The scope of work and cost estimates for each bid package;

(ii) A proposed price and scope of work for the negotiated self-perform portion of the project;

(iii) The bases used by the general contractor/construction manager to develop all cost estimates, including the negotiated self-perform portion of the project; and

(iv) The general contractor/construction manager's updated outreach plan to include small business entities, disadvantaged business entities, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as subcontractors and suppliers for the project;

(b) The public body and general contractor/construction manager may negotiate the scopes of work to be procured by bid and the price and scope of work for the negotiated self-perform portion of the project, if any;

(c) The negotiated self-perform portion of the project must not exceed fifty percent of the cost of the work to construct the project;

(d) Subject to the limitation of RCW 39.10.390(4), the public body may additionally negotiate with the general contractor/construction manager to determine on which scopes of work the general contractor/construction manager will be permitted to bid, if any;

(e) The public body and general contractor/construction manager shall negotiate, to the public body's satisfaction, a fair and reasonable outreach plan;

(f) If the public body is unable to negotiate to its reasonable satisfaction a component of this subsection (7), negotiations with the firm must be terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated.

**Sec. 7.** RCW 39.10.390 and 2013 c 222 s 16 are each amended to read as follows:

(1) Except as provided in this section, bidding on subcontract work or for the supply of equipment or materials by the general contractor/construction manager or its subsidiaries is prohibited.

(2) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work or for the supply of equipment or materials if:

(a) The work within the subcontract bid package or equipment or materials is customarily performed or supplied by the general contractor/construction manager;

(b) The bid opening is managed by the public body and is in compliance with RCW 39.10.380; and

(c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package or for the equipment or materials.

(3) In no event may the general contractor/construction manager or its subsidiaries assign warranty responsibility or the terms of its contract or purchase order with vendors for equipment or material purchases to subcontract bid package bidders or subcontractors who have been awarded a contract. The value of subcontract work performed and equipment and materials supplied by



the general contractor/construction manager may not exceed thirty percent of the negotiated maximum allowable construction cost, unless procured as a heavy civil construction project under this chapter. Negotiated support services performed by the general contractor/construction manager shall not be considered subcontract work for purposes of this subsection.

(4) Notwithstanding any contrary provision of this chapter, for a project that a public body has elected to procure as a heavy civil construction project under this chapter, at least thirty percent of the cost of the work to construct the project included in the negotiated maximum allowable construction cost must be procured through competitive sealed bidding in which bidding by the general contractor/construction manager or its subsidiaries is prohibited.

**Sec. 8.** RCW 43.131.408 and 2013 c 222 s 22 and 2013 c 186 s 2 are each reenacted and amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2022:

(1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, & 1994 c 132 s 1;

(2) RCW 39.10.210 and 2014 c ... s 1 (section 1 of this act), 2013 c 222 s 1, 2010 1st sp.s. c 36 s 6014, 2007 c 494 s 101, & 2005 c 469 s 3;

(3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c 377 s 1;

(4) RCW 39.10.230 and 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

(5) RCW 39.10.240 and 2013 c 222 s 4 & 2007 c 494 s 104;

(6) RCW 39.10.250 and 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

(7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

(8) RCW 39.10.270 and 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

(9) RCW 39.10.280 and 2014 c ... s 2 (section 2 of this act), 2013 c 222 s 8, & 2007 c 494 s 108;

(10) RCW 39.10.290 and 2007 c 494 s 109;

(11) RCW 39.10.300 and 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

(12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c 132 s 7;

(13) RCW 39.10.330 and 2013 c 222 s 11, 2009 c 75 s 5, & 2007 c 494 s 204;

(14) RCW 39.10.340 and 2014 c ... s 3 (section 3 of this act), 2013 c 222 s 12, & 2007 c 494 s 301;

(15) RCW 39.10.350 and 2014 c ... s 4 (section 4 of this act) & 2007 c 494 s 302;

(16) RCW 39.10.360 and 2014 c ... s 5 (section 5 of this act), 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;

(17) RCW 39.10.370 and 2014 c ... s 6 (section 6 of this act) & 2007 c 494 s 304;

(18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;

(19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;

(20) RCW 39.10.390 and 2014 c ... s 7 (section 7 of this act), 2013 c 222 s 16, & 2007 c 494 s 306;

(21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;

(22) RCW 39.10.410 and 2007 c 494 s 308;

(23) RCW 39.10.420 and 2013 c 222 s 18, 2013 c 186 s 1, 2012 c 102 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;

(24) RCW 39.10.430 and 2007 c 494 s 402;

(25) RCW 39.10.440 and 2013 c 222 s 19 & 2007 c 494 s 403;

(26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;

(27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;

(28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;

(29) RCW 39.10.480 and 1994 c 132 s 9;

(30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;

(31) RCW 39.10.900 and 1994 c 132 s 13;

(32) RCW 39.10.901 and 1994 c 132 s 14;

(33) RCW 39.10.903 and 2007 c 494 s 510;

(34) RCW 39.10.904 and 2007 c 494 s 512; and

(35) RCW 39.10.905 and 2007 c 494 s 513.

Passed by the House February 17, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

**CHAPTER 43**

[House Bill 2225]

**MILWAUKEE ROAD CORRIDOR**

AN ACT Relating to the Milwaukee Road corridor; creating a new section; and repealing RCW 79A.05.315, 79A.05.320, 79A.05.325, and 79A.05.330.

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

**NEW SECTION. Sec. 1.** It is the intent of the legislature to recognize that the parks and recreation commission currently has the authority to manage numerous public recreation trails throughout the state. The intent of this act is to authorize the parks and recreation commission to manage the Milwaukee Road corridor in the same manner and with the same authority as the commission manages all other recreation trails currently under its jurisdiction.

**NEW SECTION. Sec. 2.** The following acts or parts of acts are each repealed:

(1) RCW 79A.05.315 (Milwaukee Road corridor—Transfer of management control to commission) and 1989 c 129 s 1 & 1984 c 174 s 2;

(2) RCW 79A.05.320 (Milwaukee Road corridor—Duties) and 2000 c 11 s 39, 1987 c 438 s 39, & 1984 c 174 s 3;

(3) RCW 79A.05.325 (Milwaukee Road corridor—Additional duties) and 1989 c 129 s 3 & 1984 c 174 s 4; and

(4) RCW 79A.05.330 (Recreation trail on Milwaukee Road corridor) and 1984 c 174 s 5.

Passed by the House February 17, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 44

[Engrossed Substitute House Bill 2298]

## TAXES—CAPITAL PROJECTS—LEGISLATIVE AUTHORITIES

AN ACT Relating to changing the definition of capital projects to include technology infrastructure; and amending RCW 82.46.010.

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

**Sec. 1.** RCW 82.46.010 and 2011 c 354 s 1 are each amended to read as follows:

(1) The legislative authority of any county or city must identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and must indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2)(a) The legislative authority of any county or any city may impose an excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. The revenues from this tax must be used by any city or county with a population of five thousand or less and any city or county that does not plan under RCW 36.70A.040 for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040.

(b) After April 30, 1992, revenues generated from the tax imposed under this subsection (2) in counties over five thousand population and cities over five thousand population that are required or choose to plan under RCW 36.70A.040 must be used solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan and housing relocation assistance under RCW 59.18.440 and 59.18.450. However, revenues (i) pledged by such counties and cities to debt retirement prior to April 30, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (ii) committed prior to April 30, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(3) In lieu of imposing the tax authorized in RCW 82.14.030(2), the legislative authority of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

(4) Taxes imposed under this section must be collected from persons who are taxable by the state under chapter 82.45 RCW upon the occurrence of any taxable event within the unincorporated areas of the county or within the corporate limits of the city, as the case may be.

(5) Taxes imposed under this section must comply with all applicable rules, regulations, laws, and court decisions regarding real estate excise taxes as imposed by the state under chapter 82.45 RCW.

(6) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary

sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative and/or judicial facilities; river and/or waterway flood control projects by those jurisdictions that, prior to June 11, 1992, have expended funds derived from the tax authorized by this section for such purposes; and, until December 31, 1995, housing projects for those jurisdictions that, prior to June 11, 1992, have expended or committed to expend funds derived from the tax authorized by this section or the tax authorized by RCW 82.46.035 for such purposes; and technology infrastructure that is integral to the capital project.

(7) From July 22, 2011, until December 31, 2016, a city or county may use the greater of one hundred thousand dollars or thirty-five percent of available funds under this section, but not to exceed one million dollars per year, for the operations and maintenance of existing capital projects as defined in subsection (6) of this section.

Passed by the House February 14, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 45

[Engrossed House Bill 2733]

### RENEWABLE RESOURCES—HYDROELECTRIC GENERATION PROJECTS

AN ACT Relating to designating certain hydroelectric generation from a generation facility located in irrigation canals and certain pipes as an eligible renewable resource under chapter 19.285 RCW; and reenacting and amending RCW 19.285.030.

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

**Sec. 1.** RCW 19.285.030 and 2013 c 158 s 1, 2013 c 99 s 1, and 2013 c 61 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Coal transition power" has the same meaning as defined in RCW 80.80.010.

(5) "Commission" means the Washington state utilities and transportation commission.

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(8) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(9) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(12) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services;

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest (~~(or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest,))~~) where the additional generation (~~(in either case)~~) does not result in new water diversions or impoundments;

(c) Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington where the generation does not result in new water diversions or impoundments;

(d) Qualified biomass energy; or

~~((d))~~ (e) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and (ii) the qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months or more.

(13) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(14) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(15)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and

avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(16) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(17) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(18) "Qualified biomass energy" means electricity produced from a biomass energy facility that: (a) Commenced operation before March 31, 1999; (b) contributes to the qualifying utility's load; and (c) is owned either by: (i) A qualifying utility; or (ii) an industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(19) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(20) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(21) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.

(22) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(23) "Year" means the twelve-month period commencing January 1st and ending December 31st.

Passed by the House February 17, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

**CHAPTER 46**

[House Bill 2776]

## CIVIL LIBERTIES PUBLIC EDUCATION PROGRAM

AN ACT Relating to renaming the Washington civil liberties public education program; and amending RCW 28A.300.405.

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

**Sec. 1.** RCW 28A.300.405 and 2000 c 210 s 4 are each amended to read as follows:

Consistent with the legislative findings in RCW 28A.300.390, the legislature shall establish the Kip Tokuda memorial Washington civil liberties public education program. The program provides grants for the purpose of establishing a legacy of remembrance as part of a continuing process of recovery from the World War II exclusion and detention of individuals of Japanese ancestry. The program is created to do one or both of the following:

(1) Educate the public regarding the history and the lessons of the World War II exclusion, removal, and detention of persons of Japanese ancestry through the development, coordination, and distribution of new educational materials and the development of curriculum materials to complement and augment resources currently available on this subject matter; and

(2) Develop videos, plays, presentations, speaker bureaus, and exhibitions for presentation to elementary schools, secondary schools, community colleges, and to other interested parties.

Passed by the House February 18, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

**CHAPTER 47**

[Second Substitute Senate Bill 5958]

## EDUCATION—TRANSITION SERVICES—SPECIAL EDUCATION STUDENTS

AN ACT Relating to holding state agencies accountable for providing opportunities for certain students to participate in transition services; and adding a new section to chapter 28A.155 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 28A.155 RCW to read as follows:

(1) The office of the superintendent of public instruction must establish interagency agreements with the department of social and health services, the department of services for the blind, and any other state agency that provides high school transition services for special education students. Such interagency agreements shall not interfere with existing individualized education programs, nor override any individualized education program team's decision-making power. The purpose of the interagency agreements is to foster effective collaboration among the multiple agencies providing transition services for individualized education plan eligible special education students from the beginning of transition planning through age twenty-one, or through high school graduation, whichever occurs first. Interagency agreements are also intended to streamline services and programs, promote efficiencies, and establish a uniform

focus on improved outcomes related to self-sufficiency. This subsection does not require transition services plan development in addition to what exists on the effective date of this section.

(2) To the extent that data is available through data-sharing agreements established by the education data center under RCW 43.41.400, the education data center must monitor the following outcomes for individualized education plan eligible special education students after high school graduation:

(a) The number of students who, within one year of high school graduation:

(i) Enter integrated employment paid at the greater of minimum wage or competitive wage for the type of employment, with access to related employment and health benefits; or

(ii) Enter a postsecondary education or training program focused on leading to integrated employment;

(b) The wages and number of hours worked per pay period;

(c) The impact of employment on any state and federal benefits for individuals with disabilities;

(d) Indicators of the types of settings in which students who previously received transition services primarily reside;

(e) Indicators of improved economic status and self-sufficiency;

(f) Data on those students for whom a postsecondary or integrated employment outcome does not occur within one year of high school graduation, including:

(i) Information on the reasons that the desired outcome has not occurred;

(ii) The number of months the student has not achieved the desired outcome; and

(iii) The efforts made to ensure the student achieves the desired outcome.

(3) To the extent that the data elements in subsection (2) of this section are available to the education data center through data-sharing agreements, the office of the superintendent of public instruction must prepare an annual report using existing resources and submit the report to the legislature.

Passed by the Senate February 17, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 48

[Engrossed Substitute Senate Bill 6041]

### FISH AND WILDLIFE ENFORCEMENT

AN ACT Relating to fish and wildlife law enforcement; amending RCW 77.08.075, 77.15.080, 77.15.100, 77.15.120, 77.15.130, 77.15.160, 77.15.170, 77.15.180, 77.15.190, 77.15.240, 77.15.250, 77.15.370, 77.15.380, 77.15.390, 77.15.420, 77.15.425, 77.15.460, 77.15.470, 77.15.480, 77.15.630, 77.15.740, 77.15.770, 77.32.010, 77.65.280, and 77.65.340; reenacting and amending RCW 77.08.010; adding new sections to chapter 77.15 RCW; repealing RCW 77.15.560; and prescribing penalties.

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

**Sec. 1.** RCW 77.08.010 and 2012 c 176 s 4 are each reenacted and amended to read as follows:



The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.

(1) "Anadromous game fish buyer" means a person who purchases or sells steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director.

(2) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(3) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (4), (34), (49), (53), ~~((70))~~ (73), and ~~((71))~~ (74) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(4) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(5) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(6) "Building" means a private domicile, garage, barn, or public or commercial building.

(7) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(8) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(9) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(10) "Commercial" means related to or connected with buying, selling, or bartering.

(11) "Commission" means the state fish and wildlife commission.

(12) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(13) "Contraband" means any property that is unlawful to produce or possess.

(14) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(15) "Department" means the department of fish and wildlife.

(16) "Director" means the director of fish and wildlife.

(17) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(18) "Ex officio fish and wildlife officer" means:

(a) A commissioned officer of a municipal, county, or state agency having as its primary function the enforcement of criminal laws in general, while the officer is acting in the respective jurisdiction of that agency;

(b) An officer or special agent commissioned by one of the following: The national marine fisheries service; the Washington state parks and recreation commission; the United States fish and wildlife service; the Washington state department of natural resources; the United States forest service; or the United States parks service, if the agent or officer is in the respective jurisdiction of the primary commissioning agency and is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency;

(c) A commissioned fish and wildlife peace officer from another state who meets the training standards set by the Washington state criminal justice training commission pursuant to RCW 10.93.090, 43.101.080, and 43.101.200, and who is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency; or

(d) A Washington state tribal police officer who successfully completes the requirements set forth under RCW 43.101.157, is employed by a tribal nation that has complied with RCW 10.92.020(2) (a) and (b), and is acting under a mutual law enforcement assistance agreement between the department and the tribal government.

(19) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(20) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(21) "Fish broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together.

(22) "Fish buyer" means ~~((a person engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisher))~~;

(a) A wholesale fish dealer or a retail seller who directly receives fish or shellfish from a commercial fisher or receives fish or shellfish in interstate or foreign commerce; or

(b) A person engaged by a wholesale fish dealer who receives fish or shellfish from a commercial fisher.

(23) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(24) "Food, food waste, or other substance" includes human and pet food or other waste or garbage that could attract large wild carnivores.

(25) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(26) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(27) "Fur dealer" means a person who purchases, receives, or resells raw furs for commercial purposes.

(28) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(29) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(30) "Game farm" means property on which wildlife is held, confined, propagated, hatched, fed, or otherwise raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(31) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(32) "Illegal items" means those items unlawful to be possessed.

(33)(a) "Intentionally feed, attempt to feed, or attract" means to purposefully or knowingly provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract large wild carnivores to that land or building.

(b) "Intentionally feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(34) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(35) "Large wild carnivore" includes wild bear, cougar, and wolf.

(36) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(37) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(38) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(39) "Natural person" means a human being.

(40)(a) "Negligently feed, attempt to feed, or attract" means to provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract large wild carnivores to that land or building, without the awareness that a reasonable person in the same situation would have with regard to the likelihood that the food, food waste, or other substance could attract large wild carnivores to the land or building.

(b) "Negligently feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(41) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(42) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(43) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, (~~harvest~~) or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(44) "Owner" means the person in whom is vested the ownership dominion, or title of the property.

(45) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(46) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(47) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(48) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(49) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(50) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(51) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(52) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(53) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(54) "Resident" has the same meaning as defined in RCW 77.08.075.

(55) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(56) "Saltwater" means those marine waters seaward of river mouths.

(57) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(58) "Senior" means a person seventy years old or older.

(59) "Shark fin" means a raw, dried, or otherwise processed detached fin or tail of a shark.

(60)(a) "Shark fin derivative product" means any product intended for use by humans or animals that is derived in whole or in part from shark fins or shark fin cartilage.

(b) "Shark fin derivative product" does not include a drug approved by the United States food and drug administration and available by prescription only or medical device or vaccine approved by the United States food and drug administration.

(61) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken or possessed except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(62) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(63) "Taxidermist" means a person who, for commercial purposes, creates lifelike representations of fish and wildlife using fish and wildlife parts and various supporting structures.

(64) "To fish(☺)" (~~"to harvest," and "to take,"~~) and ~~((their))~~ its derivatives means an effort to kill, injure, harass, harvest, or ~~((catch))~~ capture a fish or shellfish.

(65) "To hunt" and its derivatives means an effort to kill, injure, harass, harvest, or capture~~(☺-or harass)~~ a wild animal or wild bird.

(66) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(67) "To take" and its derivatives means to kill, injure, harvest, or capture a fish, shellfish, wild animal, bird, or seaweed.

(68) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

~~((68))~~ (69) "To waste" or "to be wasted" means to allow any edible portion of any game bird, food fish, game fish, shellfish, or big game animal other than cougar to be rendered unfit for human consumption, or to fail to retrieve edible portions of such a game bird, food fish, game fish, shellfish, or big game animal other than cougar from the field. For purposes of this chapter, edible portions of game birds must include, at a minimum, the breast meat of those birds. Entrails, including the heart and liver, of any wildlife species are not considered edible.

(70) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

~~((69))~~ (71) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

~~((70))~~ (72) "Unclassified wildlife" means wildlife existing in Washington in a wild state that have not been classified as big game, game animals, game birds, predatory birds, protected wildlife, endangered wildlife, or deleterious exotic wildlife.

(73) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

~~((71))~~ (74) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

~~((72))~~ (75) "Wholesale fish dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barter, or exchanges or attempts to sell, barter, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce.

~~((73))~~ (76) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state. The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

~~((74))~~ (77) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

~~((75))~~ (78) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

~~((76))~~ (79) "Wildlife meat cutter" means a person who packs, cuts, processes, or stores wildlife for consumption for another for commercial purposes.

~~((77))~~ (80) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

**Sec. 2.** RCW 77.08.075 and 2012 c 176 s 5 are each amended to read as follows:

For the purposes of this title or rules adopted under this title, "resident" means:

(1) A natural person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, is not licensed to hunt or fish as a resident in another state or country, and is not receiving resident benefits of another state or country.

(a) For purposes of this section, "permanent place of abode" means a residence in this state that a person maintains for personal use.

(b) A natural person can demonstrate that the person has maintained a permanent place of abode in Washington by showing that the person:

(i) Uses a Washington state address for federal income tax or state tax purposes;

(ii) Designates this state as the person's residence for obtaining eligibility to hold a public office or for judicial actions;

(iii) Is a registered voter in the state of Washington; or

(iv) Is a custodial parent with a child attending prekindergarten, kindergarten, elementary school, middle school, or high school in this state.

(c) A natural person can demonstrate the intent to continue residing within the state by showing that he or she:

- (i) Has a valid Washington state driver's license; or
  - (ii) Has a valid Washington state identification card, if the person is not eligible for a Washington state driver's license; and
  - (iii) Has registered the person's vehicle or vehicles in Washington state;
- (2) The spouse of a member of the United States armed forces if the member qualifies as a resident under subsection (1), (3), or (4) of this section, or a natural person age eighteen or younger who does not qualify as a resident under subsection (1) of this section, but who has a parent or legal guardian who qualifies as a resident under subsection (1), (3), or (4) of this section;
- (3) A member of the United States armed forces temporarily stationed in Washington state on predeployment orders. A copy of the person's military orders is required to meet this condition;
- (4) ~~((A))~~ An active duty, nonretired member of the United States armed forces who is permanently stationed in Washington ~~((state))~~ or who designates Washington ~~((state))~~ on ~~((their))~~ his or her military "state of legal residence certificate" or enlistment or re-enlistment documents. A copy of the person's "state of legal residence certificate" or enlistment or re-enlistment documents is required to meet the conditions of this subsection.

**Sec. 3.** RCW 77.15.080 and 2012 c 176 s 9 are each amended to read as follows:

- (1) Based upon articulable facts that a person is engaged in fishing, harvesting, or hunting activities, fish and wildlife officers and ex officio fish and wildlife officers have the authority to temporarily stop the person and check for valid licenses, tags, permits, stamps, or catch record cards, and to inspect all fish, shellfish, seaweed, and wildlife in possession as well as the equipment being used to ensure compliance with the requirements of this title. Fish and wildlife officers and ex officio fish and wildlife officers also may request that the person write his or her signature for comparison with the signature on his or her fishing, harvesting, or hunting license. Failure to comply with the request is prima facie evidence that the person is not the person named on the license. Fish and wildlife officers and ex officio fish and wildlife officers may require the person, if age sixteen or older, to exhibit a driver's license or other photo identification.
- (2) Based upon articulable facts that a person is transporting a prohibited aquatic animal species or any aquatic plant, fish and wildlife officers and ex officio fish and wildlife officers have the authority to temporarily stop the person and inspect the watercraft to ensure that the watercraft and associated equipment are not transporting prohibited aquatic animal species or aquatic plants.

**Sec. 4.** RCW 77.15.100 and 2012 c 176 s 10 are each amended to read as follows:

- (1) Fish, shellfish, and wildlife are property of the state under RCW 77.04.012. Fish and wildlife officers may sell seized, commercially ~~((harvested))~~ taken or possessed fish and shellfish to a wholesale buyer and deposit the proceeds into the fish and wildlife enforcement reward account under RCW 77.15.425. Seized, recreationally ~~((harvested))~~ taken or possessed fish, shellfish, and wildlife may be donated to nonprofit charitable organizations. The charitable organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code.

(2) Unless otherwise provided in this title, fish, shellfish, or wildlife taken(~~(;)~~) or possessed(~~(, or harvested)~~) in violation of this title or department rule shall be forfeited to the state upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions. For criminal cases resulting in other types of dispositions, the fish, shellfish, or wildlife may be returned, or its equivalent value paid, if the fish, shellfish, or wildlife have already been donated or sold.

**Sec. 5.** RCW 77.15.120 and 2000 c 107 s 236 are each amended to read as follows:

(1) A person is guilty of unlawful taking of endangered fish or wildlife in the second degree if:

(a) The person hunts for, fishes for, possesses, maliciously harasses, or kills fish or wildlife, or (~~(maliciously)~~) possesses or intentionally destroys the nests or eggs of fish or wildlife (~~(and)~~);

(b) The fish or wildlife is designated by the commission as endangered(~~(;)~~); and

(c) The taking of the fish or wildlife or the destruction of the nests or eggs has not been authorized by rule of the commission, a permit issued by the department, or a permit issued pursuant to the federal endangered species act.

(2) A person is guilty of unlawful taking of endangered fish or wildlife in the first degree if the person has been:

(a) Convicted under subsection (1) of this section or convicted of any crime under this title involving the (~~(killing, possessing, harassing, or harming)~~) taking, possessing, or malicious harassment of endangered fish or wildlife; and

(b) Within five years of the date of the prior conviction the person commits the act described by subsection (1) of this section.

(3)(a) Unlawful taking of endangered fish or wildlife in the second degree is a gross misdemeanor.

(b) Unlawful taking of endangered fish or wildlife in the first degree is a class C felony. The department shall revoke any licenses or tags used in connection with the crime and order the person's privileges to hunt, fish, trap, or obtain licenses under this title to be suspended for two years.

**Sec. 6.** RCW 77.15.130 and 2012 c 176 s 14 are each amended to read as follows:

(1) A person is guilty of unlawful taking of protected fish or wildlife if:

(a) The person hunts for, fishes for, maliciously takes, harasses, or possesses(~~(, or maliciously kills protected)~~) fish or wildlife, or the person possesses or maliciously destroys the eggs or nests of (~~(protected)~~) fish or wildlife designated by the commission as protected, other than species designated as threatened or sensitive, and the taking has not been authorized by rule of the commission or by a permit issued by the department; (~~(or)~~)

(b) The person violates any rule of the commission regarding the taking, (~~(harming, harassment)~~) harassing, possession, or transport of protected fish or wildlife; or

(c)(i) The person hunts for, fishes for, intentionally takes, harasses, or possesses fish or wildlife, or the person possesses or intentionally destroys the



nests or eggs of fish or wildlife designated by the commission as threatened or sensitive; and

(ii) The taking of the fish or wildlife, or the destruction of the nests or eggs, has not been authorized by rule of the commission, a permit issued by the department, or a permit issued pursuant to the federal endangered species act.

(2) Unlawful taking of protected fish or wildlife is a misdemeanor.

(3) In addition to the penalties set forth in subsection (2) of this section, if a person is convicted of violating this section and the violation results in the death of protected wildlife listed in this subsection, the court shall require payment of the following amounts for each animal (~~killed~~) taken or possessed. This is a criminal wildlife penalty assessment that must be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425:

- (a) Ferruginous hawk, two thousand dollars;
- (b) Common loon, two thousand dollars;
- (c) Bald eagle, two thousand dollars;
- (d) Golden eagle, two thousand dollars; and
- (e) Peregrine falcon, two thousand dollars.

(4) If two or more persons are convicted under subsection (1) of this section, and subsection (3) of this section is applicable, the criminal wildlife penalty assessment must be imposed against the persons jointly and (~~separately~~) severally.

(5)(a) The criminal wildlife penalty assessment under subsection (3) of this section must be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this section. The criminal wildlife penalty assessment must be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect.

(b) This subsection may not be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(6) A defaulted criminal wildlife penalty assessment authorized under subsection (3) of this section may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including but not limited to vacation of a deferral of sentencing or vacation of a suspension of sentence.

(7) The department shall revoke the hunting license and suspend the hunting privileges of a person assessed a criminal wildlife penalty assessment under this section until the penalty assessment is paid through the registry of the court in which the penalty assessment was assessed.

(8) The criminal wildlife penalty assessments provided in subsection (3) of this section must be doubled in the following instances:

(a) When a person commits a violation that requires payment of a criminal wildlife penalty assessment within five years of a prior gross misdemeanor or felony conviction under this title; or

(b) When the trier of fact determines that the person (~~killed~~) took or possessed the protected wildlife in question with the intent of bartering, selling, or otherwise deriving economic profit from the wildlife or wildlife parts.

**Sec. 7.** RCW 77.15.160 and 2013 c 307 s 2 are each amended to read as follows:

The following acts are infractions and must be cited and punished as provided under chapter 7.84 RCW:

(1) Fishing and shellfishing infractions:

(a) Barbed hooks: Fishing for personal use with barbed hooks in violation of any department rule.

(b) Catch recording: Failing to immediately record a catch of fish or shellfish on a catch record card as required by RCW 77.32.430 or department rule.

(c) Catch reporting: Failing to return a catch record card to the department for other than Puget Sound Dungeness crab, as required by department rule.

(d) Recreational fishing: Fishing for fish or shellfish (~~and~~), without yet possessing fish or shellfish, the person:

(i) Owns, but fails to have in the person's possession, the license or the catch record card required by chapter 77.32 RCW for such an activity; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of fishing for fish or shellfish. This subsection does not apply to use of a net to take fish under RCW 77.15.580 or the unlawful use of shellfish gear for personal use under RCW 77.15.382.

(e) Seaweed: Taking(~~(:)~~) or possessing(~~(, or harvesting)~~) less than two times the daily possession limit of seaweed:

(i) While owning, but not having in the person's possession, the license required by chapter 77.32 RCW; or

(ii) In violation of any rule of the department or the department of natural resources regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of taking(~~(:)~~) or possessing(~~(, or harvesting~~ ~~of~~)) seaweed.

(f) Unclassified fish or shellfish: Fishing for or taking unclassified fish or shellfish in violation of ((any department rule by killing, fishing, taking, holding, possessing, or maliciously injuring or harming fish or shellfish that is not classified as game fish, food fish, shellfish, protected fish, or endangered fish)) this title or department rule.

(g) Wasting fish or shellfish: ((~~Killing,~~) Taking(~~(:)~~) or possessing food fish, game fish, or shellfish having a value of less than two hundred fifty dollars and recklessly allowing the fish or shellfish to be wasted.

(2) Hunting infractions:

(a) Eggs or nests: Maliciously, and without permit authorization, destroying, taking, or harming the eggs or active nests of a wild bird or wild animal not classified as endangered or protected. For purposes of this subsection, "active nests" means nests that are attended by an adult or contain eggs or ((~~fledglings~~)) young.

(b) Unclassified wildlife: Hunting for, harassing, or taking unclassified wildlife in violation of ((any department rule by killing, hunting, taking, holding, possessing, or maliciously injuring or harming wildlife that is not classified as big game, game animals, game birds, protected wildlife, or endangered wildlife)) this title or department rule.

(c) Wasting wildlife: (~~(Killing,)~~ Taking(~~(;)~~) or possessing wildlife (~~(that is not)~~) classified as (~~(big)~~) game birds and (~~(has)~~) having a value of less than two hundred fifty dollars, and recklessly allowing the (~~(wildlife)~~) game birds to be wasted.

(d) Wild animals: Hunting for wild animals not classified as big game or threatened or endangered and, without yet possessing the wild animals, the person owns, but fails to have in the person's possession, all licenses, tags, or permits required by this title.

(e) Wild birds: Hunting for and, without yet possessing a wild bird or birds, the person:

(i) Owns, but fails to have in the person's possession, all licenses, tags, stamps, and permits required under this title; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of hunting wild birds.

(3) Trapping, taxidermy, fur dealing, (~~(and)~~) wildlife meat cutting, and wildlife rehabilitator infractions:

(a) Recordkeeping and reporting: If a person is a taxidermist, fur dealer, or wildlife meat cutter who is processing, holding, or storing wildlife for commercial purposes, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(b) Trapper's report: Failing to report trapping activity as required by department rule.

(c) Wildlife rehabilitator's recordkeeping and reporting: If a person is a primary permittee or a subpermittee on a wildlife rehabilitation permit issued by the department, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(4) Aquatic invasive species infraction: Entering Washington by road and transporting a recreational or commercial watercraft that has been used outside of Washington without meeting documentation requirements as provided under RCW 77.12.879.

(5) Other infractions:

(a) Contests: Unlawfully conducting, holding, or sponsoring a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife.

(b) Other rules: Violating any other department rule that is designated by rule as an infraction.

(c) Posting signs: Posting signs preventing hunting or fishing on any land not owned or leased by the person doing the posting, or without the permission of the person who owns, leases, or controls the land posted.

(d) Scientific permits: Using a scientific permit issued by the director for fish, shellfish, or wildlife, but not including big game or big game parts, and the person:

(i) Violates any terms or conditions of the scientific permit; or

(ii) Violates any department rule applicable to the issuance or use of scientific permits.

(e) Transporting aquatic plants: Unlawfully transporting aquatic plants on any state or public road, including forest roads. However:

(i) This subsection does not apply to plants that are:

(A) Being transported to the department or to another destination designated by the director, in a manner designated by the department, for purposes of identifying a species or reporting the presence of a species;

(B) Legally obtained for aquarium use, wetland or lakeshore restoration, or ornamental purposes;

(C) Located within or on a commercial aquatic plant harvester that is being transported to a suitable location to remove aquatic plants;

(D) Being transported in a manner that prevents their unintentional dispersal, to a suitable location for disposal, research, or educational purposes; or

(E) Being transported in such a way as the commission may otherwise prescribe; and

(ii) This subsection does not apply to a person who:

(A) Is stopped at an aquatic invasive species check station and possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive plant species if that person complies with all department directives for the proper decontamination of the watercraft and equipment; or

(B) Has voluntarily submitted a recreational or commercial watercraft for inspection by the department or its designee and has received a receipt verifying that the watercraft has not been contaminated since its last use.

**Sec. 8.** RCW 77.15.170 and 2012 c 176 s 16 are each amended to read as follows:

(1) A person is guilty of waste of fish and wildlife if the person:

(a) (~~((The person kills;))~~) Takes(;) or possesses wildlife classified as food fish, game fish, shellfish, or ((wildlife)) game birds having a value of two hundred fifty dollars or more, or wildlife classified as big game; and

(b) (~~((The person))~~) Recklessly allows such fish, shellfish, or wildlife to be wasted.

(2) Waste of fish and wildlife is a gross misdemeanor. Upon conviction, the department shall revoke any license or tag used in the crime and shall order suspension of the person's privileges to engage in the activity in which the person committed waste of fish and wildlife for a period of one year.

(3) It is prima facie evidence of waste if:

(a) A processor purchases or engages a quantity of food fish, shellfish, or game fish that cannot be processed within sixty hours after the food fish, game fish, or shellfish are taken from the water, unless the food fish, game fish, or shellfish are preserved in good marketable condition; or

(b) A person brings a big game animal to a wildlife meat cutter and then abandons the animal. For purposes of this subsection (3)(b), a big game animal is deemed to be abandoned when its carcass is placed in the custody of a wildlife meat cutter for butchering and processing and:

(i) Having been placed in such custody for an unspecified period of time, the meat is not removed within thirty days after the wildlife meat cutter gives notice to the person who brought in the carcass or, having been so notified, the person who brought in the carcass refuses or fails to pay the agreed upon or reasonable charges for the butchering or processing of the carcass; or

(ii) Having been placed in such custody for a specified period of time, the meat is not removed at the end of the specified period or the person who brought

in the carcass refuses to pay the agreed upon or reasonable charges for the butchering or processing of the carcass.

**Sec. 9.** RCW 77.15.180 and 2001 c 253 s 29 are each amended to read as follows:

(1) A person is guilty of unlawful interference with fishing or hunting gear in the second degree if the person:

(a) (~~(Takes)~~) Removes or releases a wild animal from another person's trap without permission;

(b) Springs, pulls up, damages, possesses, or destroys another person's trap without the owner's permission; or

(c) Interferes with recreational gear used to take fish or shellfish.

(2) Unlawful interference with fishing or hunting gear in the second degree is a misdemeanor.

(3) A person is guilty of unlawful interference with fishing or hunting gear in the first degree if the person:

(a) (~~(Takes)~~) Removes or releases fish or shellfish from commercial fishing gear without the owner's permission; or

(b) Intentionally destroys or interferes with commercial fishing gear.

(4) Unlawful interference with fishing or hunting gear in the first degree is a gross misdemeanor.

(5) A person is not in violation of unlawful interference with fishing or hunting gear if the person removes a trap placed on property owned, leased, or rented by the person.

**Sec. 10.** RCW 77.15.190 and 2012 c 176 s 17 are each amended to read as follows:

(1) A person is guilty of unlawful trapping if the person:

(a) Sets out traps that are capable of taking wild animals, wild birds, game animals, or furbearing mammals and does not possess (~~(a#)~~) the licenses, tags, or permits required under this title;

(b) Violates any department rule regarding seasons, bag, or possession limits, closed areas including game reserves, closed times, or any other rule governing the trapping of wild animals or wild birds, with the exception of reporting rules; or

(c) Fails to identify the owner of the traps or devices by neither (i) attaching a metal tag with the owner's department-assigned identification number or the name and address of the trapper legibly written in numbers or letters not less than one-eighth inch in height nor (ii) inscribing into the metal of the trap such number or name and address.

(2) Unlawful trapping is a misdemeanor.

**Sec. 11.** RCW 77.15.240 and 2012 c 176 s 18 are each amended to read as follows:

(1)(~~a~~) A person is guilty of unlawful use of dogs if the person:

(~~(a#)~~) (~~i~~) Negligently fails to prevent a dog under the person's control from pursuing, harassing, attacking, or killing deer, elk, moose, caribou, mountain sheep, or animals classified as endangered under this title; or

(~~(b#)~~) (~~ii~~) Uses the dog to hunt deer or elk.

(~~(2#)~~) (~~b~~) For the purposes of this subsection, a dog is "under a person's control" if the dog is owned or possessed by, or in the custody of, a person.

~~((3))~~ (2) Unlawful use of dogs is a misdemeanor.

~~((4))~~ (3)(a) Based on a reasonable belief that a dog is pursuing, harassing, attacking, or killing a (~~snow-bound~~) deer, elk, moose, caribou, mountain sheep, or animals classified as protected or endangered under this title, fish and wildlife officers and ex officio fish and wildlife officers may:

(i) Lawfully take a dog into custody; or

(ii) If necessary to avoid repeated harassment, injury, or death of wildlife under this section, destroy the dog.

(b) Fish and wildlife officers and ex officio fish and wildlife officers who destroy a dog pursuant to this section are immune from civil or criminal liability arising from their actions.

(4)(a) This section does not apply to a person using a dog to conduct a department-approved and controlled hazing activity, as long as the person prevents or minimizes physical contact between the dog and the wildlife, and the hazing is being done only for the purposes of wildlife control and the prevention of damage to commercial crops.

(b) For the purposes of this subsection, "hazing" means the act of chasing or herding wildlife in an effort to move them from one location to another.

**Sec. 12.** RCW 77.15.250 and 2001 c 253 s 32 are each amended to read as follows:

(1)(a) A person is guilty of unlawfully releasing, planting, possessing, or placing fish, shellfish, or wildlife if the person knowingly releases, plants, possesses, or places live fish, shellfish, wildlife, or aquatic plants within the state in violation of this title or rule of the department, and the fish, shellfish, or wildlife have not been classified as deleterious wildlife. This subsection does not apply to a release of game fish into private waters for which a game fish stocking permit has been obtained, or the planting of fish or shellfish by permit of the commission.

(b) A violation of this subsection is a gross misdemeanor. In addition, the department shall order the person to pay all costs the department incurred in capturing, killing, or controlling the fish, shellfish, aquatic plants, (~~or wildlife released or its progeny~~) wildlife, or progeny unlawfully released, planted, possessed, or placed. This does not affect the existing authority of the department to bring a separate civil action to recover costs of capturing, killing, or controlling the fish, shellfish, aquatic plants, (~~or~~) wildlife (~~released or their progeny, or restoration of habitat necessitated by the unlawful release~~), or progeny unlawfully released, planted, possessed, or placed, or the costs of habitat restoration necessitated by the unlawful release, planting, possession, or placing.

(2)(a) A person is guilty of (~~unlawful release of~~) unlawfully releasing, planting, possessing, or placing deleterious exotic wildlife if the person knowingly releases, plants, possesses, or places live fish, shellfish, or wildlife within the state in violation of this title or rule of the department, and (~~such~~) the fish, shellfish, or wildlife (~~has~~) have been classified as deleterious exotic wildlife by rule of the commission.

(b) A violation of this subsection is a class C felony. In addition, the department shall (~~also~~) order the person to pay all costs the department incurred in capturing, killing, or controlling the fish, shellfish, (~~or~~) wildlife (~~released or its progeny~~), or progeny unlawfully released, planted, possessed,

or placed. This does not affect the existing authority of the department to bring a separate civil action to recover costs of capturing, killing, or controlling the fish, shellfish, ~~((or wildlife released or their progeny, or restoration of habitat necessitated by the unlawful release))~~ wildlife, or progeny unlawfully released, planted, possessed, or placed, or the costs of habitat restoration necessitated by the unlawful release, planting, possession, or placing.

**Sec. 13.** RCW 77.15.370 and 2012 c 176 s 22 are each amended to read as follows:

(1) A person is guilty of unlawful recreational fishing in the first degree if:

(a) The person takes(~~(;)~~) or possesses(~~(, or retains))~~ two times or more than the bag limit or possession limit of fish or shellfish allowed by any rule of the director or commission setting the amount of food fish, game fish, or shellfish that can be taken(~~(;)~~) or possessed(~~(, or retained))~~ for noncommercial use;

(b) The person fishes in a fishway;

(c) The person shoots, gaffs, snags, snares, spears, dipnets, or stones fish or shellfish in state waters, or possesses fish or shellfish taken by such means, unless such means are authorized by express department rule;

(d) The person fishes for or possesses a fish listed as threatened or endangered in 50 C.F.R. Sec. 223.102 (2006) or Sec. 224.101 (2010), unless fishing for or (~~possession of~~) possessing such fish is specifically allowed under federal or state law;

(e) The person possesses a white sturgeon measuring in excess of the maximum size limit as established by rules adopted by the department; (~~(or)~~)

(f) (~~The person possesses a salmon or steelhead during a season closed for that species~~) The person possesses a green sturgeon of any size; or

(g)(i) The person possesses a wild salmon or wild steelhead during a season closed for wild salmon or wild steelhead.

(ii) For the purposes of this subsection:

(A) "Wild salmon" means a salmon with an unclipped adipose fin, regardless of whether the salmon's ventral fin is clipped.

(B) "Wild steelhead" means a steelhead with no fins clipped.

(2) Unlawful recreational fishing in the first degree is a gross misdemeanor.

(3) In addition to the penalties set forth in subsection (2) of this section, if a person is convicted of violating this section and the violation results in the death of fish listed in this subsection, the court shall require payment of the following amounts for each fish taken or possessed. This is a criminal wildlife penalty assessment that must be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425:

(a) White sturgeon longer than fifty-five inches in fork length, two thousand dollars;

(b) Green sturgeon, two thousand dollars; and

(c) Wild salmon or wild steelhead, five hundred dollars.

(4) If two or more persons are convicted under subsection (1) of this section, and subsection (3) of this section is applicable, the criminal wildlife penalty assessment must be imposed against the persons jointly and severally.

(5)(a) The criminal wildlife penalty assessment under subsection (3) of this section must be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this section. The

criminal wildlife penalty assessment must be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect.

(b) This subsection may not be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(6) A defaulted criminal wildlife penalty assessment authorized under subsection (3) of this section may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including but not limited to vacation of a deferral of sentencing or vacation of a suspension of sentence.

(7) The department shall revoke the fishing license and suspend the fishing privileges of a person assessed a criminal wildlife penalty assessment under this section until the penalty assessment is paid through the registry of the court in which the penalty assessment was assessed.

(8) The criminal wildlife penalty assessments provided in subsection (3) of this section must be doubled in the following instances:

(a) When a person commits a violation that requires payment of a criminal wildlife penalty assessment within five years of a prior gross misdemeanor or felony conviction under this title; or

(b) When the trier of fact determines that the person took or possessed the fish in question with the intent of bartering, selling, or otherwise deriving economic profit from the fish or fish parts.

**Sec. 14.** RCW 77.15.380 and 2012 c 176 s 23 are each amended to read as follows:

(1) A person is guilty of unlawful recreational fishing in the second degree if the person fishes for fish or shellfish and, whether or not the person possesses fish or shellfish, the person has not purchased the appropriate fishing or shellfishing license and catch record card issued to Washington residents or nonresidents under chapter 77.32 RCW.

(2) A person is guilty of unlawful recreational fishing in the second degree if the person takes(~~(;)~~) or possesses(~~(; or harvests)~~) fish or shellfish and:

(a) The person owns, but does not have in the person's possession, the license or the catch record card required by chapter 77.32 RCW for such activity; or

(b) The action violates any department rule regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or any other rule addressing the manner or method of fishing for, taking, or ((possession of)) possessing fish or shellfish. This section does not apply to use of a net to take fish under RCW 77.15.580 or the unlawful use of shellfish gear for personal use under RCW 77.15.382.

(3) Unlawful recreational fishing in the second degree is a misdemeanor.

**Sec. 15.** RCW 77.15.390 and 2012 c 176 s 24 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes(~~(;)~~) or possesses(~~(; or harvests)~~) seaweed and:



(a) The person has not purchased a personal use shellfish and seaweed license issued to Washington residents or nonresidents under chapter 77.32 RCW; or

(b) The person takes ~~(;)~~ or possesses ~~(-or harvests)~~ seaweed in an amount that is two times or more of the daily possession limit of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 16.** RCW 77.15.420 and 2005 c 406 s 5 are each amended to read as follows:

(1) If a person is convicted of violating RCW 77.15.410 and that violation results in the death of wildlife listed in this section, the court shall require payment of the following amounts for each animal ~~((killed))~~ taken or possessed. This shall be a criminal wildlife penalty assessment that shall be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425.

- (a) Moose, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission, except for mountain caribou and grizzly bear as listed under (d) of this subsection . . . . . \$4,000
- (b) Elk, deer, black bear, and cougar . . . . . \$2,000
- (c) Trophy animal elk and deer . . . . . \$6,000
- (d) Mountain caribou, grizzly bear, and trophy animal mountain sheep . . . . . \$12,000

~~(2) ((No forfeiture of bail may be less than the amount of the bail established for hunting during closed season plus the amount of the criminal wildlife penalty assessment in subsection (1) of this section.~~

~~(3))~~ (a) For the purpose of this section a "trophy animal" is:

~~((a))~~ (i) A buck deer with four or more antler points on both sides, not including eyeguards;

~~((b))~~ (ii) A bull elk with five or more antler points on both sides, not including eyeguards; or

~~((c))~~ (iii) A mountain sheep with a horn curl of three-quarter curl or greater.

(b) For purposes of this subsection, "eyeguard" means an antler protrusion on the main beam of the antler closest to the eye of the animal.

~~((4))~~ (3) If two or more persons are convicted of illegally possessing wildlife in subsection (1) of this section, the criminal wildlife penalty assessment shall be imposed on them jointly and ~~((separately))~~ severally.

~~((5))~~ (4) The criminal wildlife penalty assessment shall be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this title. The criminal wildlife penalty assessment shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. This section may not be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

~~((6))~~ (5) A defaulted criminal wildlife penalty assessment may be collected by any means authorized by law for the enforcement of orders of the

court or collection of a fine or costs, including but not limited to vacation of a deferral of sentencing or vacation of a suspension of sentence.

~~((7))~~ (6) A person assessed a criminal wildlife penalty assessment under this section shall have his or her hunting license revoked and all hunting privileges suspended until the penalty assessment is paid through the registry of the court in which the penalty assessment was assessed.

~~((8))~~ (7) The criminal wildlife penalty assessments provided in subsection (1) of this section shall be doubled in the following instances:

(a) When a person is convicted of spotlighting big game under RCW 77.15.450;

(b) When a person commits a violation that requires payment of a wildlife penalty assessment within five years of a prior gross misdemeanor or felony conviction under this title;

(c) When the trier of fact determines that the person ~~((killed))~~ took or possessed the animal in question with the intent of bartering, selling, or otherwise deriving economic profit from the animal or the animal's parts; or

(d) When ~~((a))~~ the trier of fact determines that the person ~~((kills))~~ took the animal under the supervision of a licensed guide.

**Sec. 17.** RCW 77.15.425 and 2009 c 333 s 18 are each amended to read as follows:

The fish and wildlife enforcement reward account is created in the custody of the state treasurer. Deposits to the account include: Receipts from fish and shellfish overages as a result of a department enforcement action; fees for hunter education deferral applications; fees for master hunter applications and master hunter certification renewals; all receipts from criminal wildlife penalty assessments under RCW 77.15.370, 77.15.400, and 77.15.420; all receipts of court-ordered restitution or donations associated with any fish, shellfish, or wildlife enforcement action; and proceeds from forfeitures and evidence pursuant to RCW 77.15.070 and 77.15.100. The department may accept money or personal property from persons under conditions requiring the property or money to be used consistent with the intent of expenditures from the fish and wildlife enforcement reward account. Expenditures from the account may be used only for investigation and prosecution of fish and wildlife offenses, to provide rewards to persons informing the department about violations of this title and rules adopted under this title, to offset department-approved costs incurred to administer the hunter education deferral program and the master hunter ~~((permit))~~ permit program, and for other valid enforcement uses as determined by the commission. Only the director 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.

**Sec. 18.** RCW 77.15.460 and 2012 c 176 s 28 are each amended to read as follows:

(1) A person is guilty of unlawful possession of a loaded rifle or shotgun in a motor vehicle, as defined in RCW 46.04.320, or upon an off-road vehicle, as defined in RCW 46.04.365, if:

(a) The person carries, transports, conveys, possesses, or controls a rifle or shotgun in a motor vehicle, or upon an off-road vehicle, except as allowed by department rule; and

(b) The rifle or shotgun contains shells or cartridges in the magazine or chamber, or is a muzzle-loading firearm that is loaded and capped or primed.

(2) A person is guilty of unlawful use of a loaded firearm if:

(a) The person negligently discharges a firearm from, across, or along the maintained portion of a public highway; or

(b) The person discharges a firearm from within a moving motor vehicle or from upon a moving off-road vehicle.

(3) Unlawful possession of a loaded rifle or shotgun in a motor vehicle or upon an off-road vehicle, and unlawful use of a loaded firearm are misdemeanors.

(4) This section does not apply if the person:

(a) Is a law enforcement officer who is authorized to carry a firearm and is on duty within the officer's respective jurisdiction;

(b) Possesses a disabled hunter's permit as provided by RCW 77.32.237 and complies with all rules of the department concerning hunting by persons with disabilities; or

(c) Discharges the rifle or shotgun from upon a nonmoving motor vehicle (~~((or a nonmoving off-road vehicle))~~), as long as the engine is turned off and the motor vehicle (~~((or off-road vehicle))~~) is not parked on or beside the maintained portion of a public road, except as authorized by the commission by rule. This subsection (4)(c) does not apply to off-road vehicles, which are unlawful to use for hunting under RCW 46.09.480, unless the person has a department permit issued under RCW 77.32.237.

(5) For purposes of subsection (1) of this section, a rifle or shotgun shall not be considered loaded if the detachable clip or magazine is not inserted in or attached to the rifle or shotgun.

**Sec. 19.** RCW 77.15.470 and 2000 c 107 s 246 are each amended to read as follows:

(1) A person is guilty of unlawfully avoiding wildlife check stations or field inspections if the person fails to:

(a) Obey check station signs;

(b) Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer or if directed by an ex officio fish and wildlife officer participating in a department-authorized check station; or

(c) Produce for inspection upon request by a fish and wildlife officer or ex officio fish and wildlife officer: (i) Hunting or fishing equipment; (ii) seaweed, fish, shellfish, or wildlife; or (iii) licenses, permits, tags, stamps, or catch record cards required by this title.

(2) Unlawfully avoiding wildlife check stations or field inspections is a gross misdemeanor.

(3) Wildlife check stations may not be established upon interstate highways or state routes.

**Sec. 20.** RCW 77.15.480 and 2001 c 253 s 42 are each amended to read as follows:

Articles or devices unlawfully used, possessed, or maintained for ~~((catching,))~~ taking, ~~((killing,))~~ harassing, attracting, or decoying wildlife, fish, and shellfish are public nuisances. If necessary, fish and wildlife officers and ex officio fish and wildlife officers may seize, abate, or destroy these public nuisances without warrant or process.

**Sec. 21.** RCW 77.15.630 and 2012 c 176 s 31 are each amended to read as follows:

(1) A person ~~((who acts in the capacity of a wholesale fish dealer, anadromous game fish buyer, or a fish buyer is guilty of unlawful fish and shellfish catch accounting in the second degree if the person:~~

~~(a) Possesses or receives fish or shellfish for commercial purposes worth less than two hundred fifty dollars; and~~

~~(b)) licensed as a commercial fisher, wholesale fish dealer, direct retail seller, anadromous game fish buyer, or a fish buyer, or a person not so licensed but acting in such a capacity, is guilty of unlawful fish and shellfish catch accounting in the second degree if he or she receives or delivers for commercial purposes fish or shellfish worth less than two hundred fifty dollars; and~~

~~(a) Fails to document such fish or shellfish with a fish-receiving ticket or other documentation required by statute or department rule; (~~or~~~~

~~(~~e~~)) (b) Fails to sign the fish receiving ticket or other required documentation, fails to provide all of the information required by statute or department rule on the fish receiving ticket or other documentation, or both; or~~

~~(c) Fails to submit the fish receiving ticket to the department as required by statute or department rule.~~

(2) A person is guilty of unlawful fish and shellfish catch accounting in the first degree if the person commits ~~((the))~~ an act described by subsection (1) of this section and:

(a) The violation involves fish or shellfish worth two hundred fifty dollars or more;

(b) The person acted with knowledge that the fish or shellfish were taken from a closed area, at a closed time, or by a person not licensed to take such fish or shellfish for commercial purposes; or

(c) The person acted with knowledge that the fish or shellfish were taken in violation of any tribal law.

(3)(a) Unlawful fish and shellfish catch accounting in the second degree is a gross misdemeanor.

(b) Unlawful fish and shellfish catch accounting in the first degree is a class C felony. Upon conviction, the department shall suspend all privileges to engage in fish buying or dealing for two years.

(4) For the purposes of this section:

(a) A person "receives" fish or shellfish when title or control of the fish or shellfish is transferred or conveyed to the person.

(b) A person "delivers" fish or shellfish when title or control of the fish or shellfish is transferred or conveyed from the person.

**Sec. 22.** RCW 77.15.740 and 2012 c 176 s 37 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it is unlawful to:

(a) Cause a vessel or other object to approach, in any manner, within two hundred yards of a southern resident orca whale;

(b) Position a vessel to be in the path of a southern resident orca whale at any point located within four hundred yards of the whale. This includes intercepting a southern resident orca whale by positioning a vessel so that the prevailing wind or water current carries the vessel into the path of the whale at any point located within four hundred yards of the whale;

(c) Fail to disengage the transmission of a vessel that is within two hundred yards of a southern resident orca whale; or

(d) Feed a southern resident orca whale.

(2) A person is exempt from subsection (1) of this section if that person is:

(a) Operating a federal government vessel in the course of his or her official duties, or operating a state, tribal, or local government vessel when engaged in official duties involving law enforcement, search and rescue, or public safety;

(b) Operating a vessel in conjunction with a vessel traffic service established under 33 C.F.R. and following a traffic separation scheme, or complying with a vessel traffic service measure of direction. This also includes support vessels escorting ships in the traffic lanes, such as tug boats;

(c) Engaging in an activity, including scientific research, pursuant to a permit or other authorization from the national marine fisheries service and the department;

(d) Lawfully engaging in a treaty Indian or commercial fishery that is actively setting, retrieving, or closely tending fishing gear;

(e) Conducting vessel operations necessary to avoid an imminent and serious threat to a person, vessel, or the environment, including when necessary for overall safety of navigation and to comply with state and federal navigation requirements; or

(f) Engaging in rescue or clean-up efforts of a beached southern resident orca whale overseen, coordinated, or authorized by a volunteer stranding network.

(3) For the purpose of this section, "vessel" includes aircraft(~~canoes, fishing vessels, kayaks, personal watercraft, rafts, recreational vessels, tour boats, whale watching boats, vessels engaged in whale watching activities, or other small craft including power boats and sailboats~~) while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water. However, "vessel" does not include inner tubes, air mattresses, sailboards, and small rafts, or flotation devices or toys customarily used by swimmers.

(4)(a) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW and carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(b) A person who qualifies for an exemption under subsection (2) of this section may offer that exemption as an affirmative defense, which that person must prove by a preponderance of the evidence.

**Sec. 23.** RCW 77.15.770 and 2011 c 324 s 2 are each amended to read as follows:

(1) Except as otherwise provided in this section, a person is guilty of unlawful trade in shark fins in the second degree if:

(a) The person sells, offers for sale, purchases, offers to purchase, or otherwise exchanges a shark fin or shark fin derivative product for commercial purposes; or

(b) The person prepares or processes a shark fin or shark fin derivative product for human or animal consumption for commercial purposes.

(2) Except as otherwise provided in this section, a person is guilty of unlawful trade in shark fins in the first degree if:

(a) The person commits the act described by subsection (1) of this section and the violation involves shark fins or a shark fin derivative product with a total market value of two hundred fifty dollars or more;

(b) The person commits the act described by subsection (1) of this section and acted with knowledge that the shark fin or shark fin derivative product originated from a shark that was harvested in an area or at a time where or when the harvest was not legally allowed or by a person not licensed to harvest the shark; or

(c) The person commits the act described by subsection (1) of this section and the violation occurs within five years of entry of a prior conviction under this section or a prior conviction for any other gross misdemeanor or felony under this title involving fish, other than a recreational fishing violation.

(3)(a) Unlawful trade in shark fins in the second degree is a gross misdemeanor. Upon conviction, the department shall suspend any commercial fishing privileges for the person that requires a license under this title for a period of one year.

(b) Unlawful trade in shark fins in the first degree is a class C felony. Upon conviction, the department shall suspend any commercial fishing privileges for the person that requires a license under this title for a period of one year.

(4) Any person who obtains a license or permit issued by the department to take or possess sharks or shark parts for bona fide research or educational purposes, and who sells, offers for sale, purchases, offers to purchase, or otherwise trades a shark fin or shark fin derivative product, exclusively for bona fide research or educational purposes, may not be held liable under or subject to the penalties of this section.

~~((5) Nothing in this section prohibits the sale, offer for sale, purchase, offer to purchase, or other exchange of shark fins or shark fin derivative products for commercial purposes, or preparation or processing of shark fins or shark fin derivative products for purposes of human or animal consumption for commercial purposes, if the shark fins or shark fin derivative products were lawfully harvested or lawfully acquired prior to July 22, 2011.))~~

**NEW SECTION. Sec. 24.** A new section is added to chapter 77.15 RCW to read as follows:

(1) It is unlawful for any person to possess in Washington any fish, shellfish, or wildlife that the person knows was taken in another state or country in violation of that state's or country's laws or regulations relating to licenses or tags, seasons, areas, methods, or bag or possession limits.

(2) As used in this section, the terms "fish," "shellfish," and "wildlife" have the meaning ascribed to those terms in the applicable law or regulation of the state or country of the fish's, shellfish's, or wildlife's origin.

(3) Unlawful possession of fish, shellfish, or wildlife taken or possessed in violation of another state's or country's laws or regulations is a gross misdemeanor.

**NEW SECTION. Sec. 25.** A new section is added to chapter 77.15 RCW to read as follows:

(1)(a) A person is guilty of engaging in wildlife rehabilitation without a permit if the person captures, transports, treats, feeds, houses, conditions, or trains injured, diseased, oiled, or abandoned wildlife without department authority for temporary actions or a wildlife rehabilitation permit issued by the department.

(b) The department must adopt rules for permissible temporary actions that include, at a minimum, the conditions under which a person may capture or transport wildlife to a primary permittee, subpermittee, or a rehabilitation facility.

(2) A person who is a primary permittee or subpermittee on a wildlife rehabilitation permit issued by the department is guilty of unlawful use of a wildlife rehabilitation permit if the person violates any permit provisions or department rules pertaining to wildlife rehabilitation other than those addressing recordkeeping and reporting requirements.

(3) A violation of this section is a misdemeanor.

**Sec. 26.** RCW 77.32.010 and 2011 c 320 s 19 are each amended to read as follows:

(1) Except as otherwise provided in this chapter or department rule, a recreational license issued by the director is required to hunt ~~((for or take wild animals or wild birds, fish for, take, or harvest fish, shellfish, and)), fish, or take wildlife or seaweed.~~ A recreational fishing or shellfish license is not required for carp, smelt, and crawfish, and a hunting license is not required for bullfrogs.

(2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040 is required to park or operate a motor vehicle on a recreation site or lands, as defined in RCW 79A.80.010.

(3) ~~((During the 2009-2011 fiscal biennium to enable the implementation of the pilot project established in section 307, chapter 329, Laws of 2008,)) The commission may, by rule, indicate that a fishing permit issued to a nontribal member by the Colville Tribes shall satisfy the license requirements in subsection (1) of this section on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and that a Colville Tribes tribal member identification card shall satisfy the license requirements in subsection (1) of this section on all waters of Lake Rufus Woods.~~

**Sec. 27.** RCW 77.65.280 and 2013 c 23 s 244 are each amended to read as follows:

(1) A wholesale fish dealer's license is required for:

~~((1))~~ (a) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

~~((2))~~ (b) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

~~((3))~~ (c) Fishers who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state, unless the fisher has a direct retail endorsement.

~~((4))~~ (d) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other by-products from food fish or shellfish.

~~((5))~~ (e) A business ~~((employing))~~ engaging a fish buyer as defined under RCW 77.65.340.

(2) The annual license fee for a wholesale dealer is two hundred fifty dollars. The application fee is one hundred five dollars. A wholesale fish dealer's license is not required for persons engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

**Sec. 28.** RCW 77.65.340 and 2013 c 23 s 245 are each amended to read as follows:

(1) A fish buyer's license is required of and shall be carried by each individual engaged by a wholesale fish dealer to purchase food fish or shellfish from a ~~((licensed))~~ commercial fisher. A fish buyer may represent only one wholesale fish dealer.

(2) The annual fee for a fish buyer's license is ninety-five dollars. The application fee is one hundred five dollars.

**NEW SECTION. Sec. 29.** RCW 77.15.560 (Commercial fish, shellfish harvest or delivery—Failure to report—Penalty) and 1998 c 190 s 41 are each repealed.

**NEW SECTION. Sec. 30.** 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, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 49

[Substitute Senate Bill 6046]

### WHISTLEBLOWERS—PROCEDURES AFTER INVESTIGATION

AN ACT Relating to whistleblowers; and adding a new section to chapter 49.60 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 49.60 RCW to read as follows:

(1) When the commission has completed the investigation of a complaint alleging workplace reprisal or retaliatory action against a whistleblower as defined in chapter 70.87 RCW, the commission must notify the complainant of the completion of the investigation. The commission must issue written findings



of fact and a finding that there is or there is not reasonable cause for believing an unfair practice has been or is being committed as required by RCW 49.60.240 within ninety days of notification of the completed investigation.

(2) If the individual filing a complaint alleging workplace reprisal or retaliatory action against a whistleblower under chapter 70.87 RCW is represented by a labor union, the commission must notify the union of the complaint and the results of the investigation.

(3) If, after a finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed against a whistleblower under chapter 70.87 RCW, no agreement is reached for the elimination of the unfair practice within six months, a finding to that effect must be made and reduced to writing, with a copy provided to the complainant, the complainant's labor union, and the respondent. The commission, in the exercise of discretion, may grant additional time to seek agreement for the elimination of the unfair practice based on extenuating facts and circumstances.

Passed by the Senate February 13, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 50

[Senate Bill 6093]

### EDUCATION—BACKGROUND CHECKS—PORTABLE BACKGROUND CHECK CLEARANCE CARD

AN ACT Relating to allowing valid portable background check clearance cards issued by the department of early learning to be used by certain educational employees and their contractors for purposes of their background check requirements; and amending RCW 28A.400.303 and 28A.410.010.

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

**Sec. 1.** RCW 28A.400.303 and 2009 c 381 s 29 are each amended to read as follows:

(1) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity shall provide a copy of the record report to the applicant. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor may waive the requirement. Except as provided in subsection (2) of this section, the district, pursuant to chapter 41.59 or 41.56 RCW, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or

contractor hiring the employee shall determine who shall pay costs associated with the record check.

(2) Federal bureau of Indian affairs-funded schools may use the process in subsection (1) of this section to perform record checks for their employees and applicants for employment.

(3) Individuals who hold a valid portable background check clearance card issued by the department of early learning consistent with RCW 43.215.215 can meet the requirements in subsection (1) of this section by providing a true and accurate copy of their Washington state patrol and federal bureau of investigation background report results to the office of the superintendent of public instruction.

**Sec. 2.** RCW 28A.410.010 and 2011 2nd sp. s. c 5 s 4 are each amended to read as follows:

(1)(a) The Washington professional educator standards board shall establish, publish, and enforce rules determining eligibility for and certification of personnel employed in the common schools of this state, including certification for emergency or temporary, substitute or provisional duty and under such certificates or permits as the board shall deem proper or as otherwise prescribed by law. The rules shall require that the initial application for certification shall require a record check of the applicant through the Washington state patrol criminal identification system and through the federal bureau of investigation at the applicant's expense. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. An individual who holds a valid portable background check clearance card issued by the department of early learning consistent with RCW 43.215.215 is exempt from the office of the superintendent of public instruction fingerprint background check if the individual provides a true and accurate copy of his or her Washington state patrol and federal bureau of investigation background report results to the office of the superintendent of public instruction. The superintendent of public instruction may waive the record check for any applicant who has had a record check within the two years before application. The rules shall permit a holder of a lapsed certificate but not a revoked or suspended certificate to be employed on a conditional basis by a school district with the requirement that the holder must complete any certificate renewal requirements established by the state board of education within two years of initial reemployment.

(b) In establishing rules pertaining to the qualifications of instructors of American sign language the board shall consult with the national association of the deaf, "sign instructors guidance network" (s.i.g.n.), and the Washington state association of the deaf for evaluation and certification of sign language instructors.

(c) The board shall develop rules consistent with RCW 18.340.020 for the certification of spouses of military personnel.

(2) The superintendent of public instruction shall act as the administrator of any such rules and have the power to issue any certificates or permits and revoke the same in accordance with board rules.

Passed by the Senate February 17, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 19, 2014.  
Filed in Office of Secretary of State March 19, 2014.

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## CHAPTER 51

[Substitute Senate Bill 6216]

### COUNTY FERRY DISTRICTS—COUNTY LEGISLATIVE AUTHORITY POWERS

AN ACT Relating to county ferries; and adding a new chapter to Title 36 RCW.

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

**NEW SECTION. Sec. 1.** Any county with a population of one million or more in which a county ferry district has been established pursuant to RCW 36.54.110 through 36.54.190 with boundaries coterminous with the boundaries of the county may by ordinance or resolution of the county legislative authority assume the rights, powers, functions, and obligations of the county ferry district in accordance with this chapter.

**NEW SECTION. Sec. 2.** The assumption of the rights, powers, functions, and obligations of a county ferry district may be initiated by the adoption of an ordinance or a resolution by the county legislative authority indicating its intention to conduct a hearing concerning the assumption of such rights, powers, functions, and obligations. If the county legislative authority adopts such an ordinance or a resolution of intention, the ordinance or resolution must set a time and place at which the county legislative authority will consider the proposed assumption of the rights, powers, functions, and obligations of the county ferry district, and must state that all persons interested may appear and be heard. The ordinance or resolution of intention must be published at least two times during the two weeks preceding the scheduled hearing in newspapers of daily general circulation printed or published in the county in which the county ferry district is to be located.

**NEW SECTION. Sec. 3.** At the time scheduled for the hearing in the ordinance or resolution of intention, the county legislative authority must consider the assumption of the rights, powers, functions, and obligations of the county ferry district and hear those appearing and all protests and objections to it. The county legislative authority may continue the hearing from time to time, not exceeding sixty days in all.

**NEW SECTION. Sec. 4.** (1) If, after receiving testimony, the county legislative authority determines that the public interest or welfare would be satisfied by the county assuming the rights, powers, immunities, functions, and obligations of the county ferry district, the county legislative authority may declare that to be its intent and assume such rights, powers, immunities, functions, and obligations by ordinance or resolution, providing that the county is vested with every right, power, immunity, function, and obligation currently granted to or possessed by the county ferry district pursuant to RCW 36.54.110 through 36.54.190. However, in exercising such rights, powers, immunities, functions, and obligations, all actions must be taken in the name of the county and title to all property or property rights vest in the county.

(2) Upon assumption of the rights, powers, immunities, functions, and obligations of the county ferry district by the county: The governing body established pursuant to RCW 36.54.110(5) must be abolished; RCW

36.54.110(5) does not apply to the county; and the county legislative authority is vested with all rights, powers, immunities, functions, and obligations otherwise vested by law in the governing board of the county ferry district. However, in any county with a home rule charter, such rights, powers, functions, and obligations vest in accordance with the executive and legislative responsibilities defined in such charter.

**NEW SECTION. Sec. 5.** Employees and personnel of the county ferry district do not automatically become employees of the county.

**NEW SECTION. Sec. 6.** No transfer of any function made pursuant to this chapter may be construed to impair or alter any existing rights acquired under RCW 36.54.110 through 36.54.190 or any other provision of law relating to county ferry districts, nor as impairing or altering any actions, activities, or proceedings validated thereunder, nor as impairing or altering any civil or criminal proceedings instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder; and neither the assumption of control of any county ferry district function by a county, nor any transfer of rights, powers, functions, and obligations as provided in this chapter, may impair or alter the validity of any act performed by such county ferry district or division thereof or any officer thereof prior to the assumption of such rights, powers, functions, and obligations by any county as authorized by this chapter. Furthermore, an ad valorem property tax levy upon real and personal property authorized under RCW 36.54.130 and levied by a county as authorized under this chapter must be treated as a levy by a county ferry district for all purposes including, but not limited to, limitations on levies contained in RCW 84.52.043.

**NEW SECTION. Sec. 7.** (1) All rules and regulations, and all pending business before the board of any county ferry district transferred pursuant to this chapter must be continued and acted upon by the county.

(2) All existing contracts and obligations of the transferred county ferry district remain in full force and effect, and must be performed by the county. A transfer authorized in this chapter does not affect the validity of any official act performed by any official or employee prior to the transfer authorized pursuant to this chapter.

**NEW SECTION. Sec. 8.** (1) When the rights, powers, functions, and obligations of a county ferry district are transferred pursuant to this chapter, all real and personal property owned by the county ferry district becomes that of the county.

(2) All reports, documents, surveys, books, records, files, papers, or other writings relating to the administration of the powers, duties, and functions transferred pursuant to this chapter and available to the county ferry district must be made available to the county.

(3) All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the rights, powers, functions, and obligations transferred under this chapter and available to the county ferry district must be made available to the county.

(4) All funds, credits, or other assets held in connection with powers, duties, and functions transferred under this chapter must be assigned to the county.

(5) Any appropriations or federal grant made to the county ferry district for the purpose of carrying out the rights, powers, functions, and obligations authorized to be assumed by a county pursuant to this chapter, on the effective date of such transfer, must be credited to the county for the purpose of carrying out such transferred rights, powers, functions, and obligations.

**NEW SECTION. Sec. 9.** (1) The county must assume and agree to provide for the payment of all of the indebtedness of the county ferry district, including the payment and retirement of outstanding general obligation and revenue bonds issued by the county ferry district. Until the indebtedness of a county ferry district assumed by a county under this chapter has been discharged, all property within the boundaries of the county ferry district and the owners and occupants of that property continue to be liable for taxes, special assessments, and other charges legally pledged to pay the indebtedness of the county ferry district. The county must assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges, and observing and performing the other contractual obligations of the county ferry district. The legislative authority of the county must act in the same manner as the governing body of the county ferry district for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection, and perform all acts necessary to ensure performance of the contractual obligations of the county ferry district in the same manner and by the same means as if the property of the county ferry district had not been acquired by the county.

(2) When a county assumes the obligation of paying indebtedness of a county ferry district and if property taxes or assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the county ferry district prior to such assumption, the same when collected must belong and be paid to the county and be used by such county so far as necessary for payment of the indebtedness of the county ferry district existing and unpaid on the date such county assumed that indebtedness. Any funds received by the county that have been collected for the purpose of paying any bonded or other indebtedness of the county ferry district must be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. Any funds remaining after the payment and retirement of such indebtedness must be used solely for carrying out the rights, powers, functions, and obligations of the county ferry district assumed by the county. The transfer of property as provided in this chapter does not derogate from the claims or rights of the creditors of the county ferry district or impair the ability of the county ferry district to respond to its debts and obligations.

**NEW SECTION. Sec. 10.** 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. 11.** Sections 1 through 10 of this act constitute a new chapter in Title 36 RCW.

Passed by the Senate February 13, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 19, 2014.  
Filed in Office of Secretary of State March 19, 2014.

**CHAPTER 52**

[Substitute Senate Bill 6339]

**CRIMES—COERCION OF INVOLUNTARY SERVITUDE**

AN ACT Relating to coercion of involuntary servitude; reenacting and amending RCW 9A.40.010; adding a new section to chapter 9A.40 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 9A.40 RCW to read as follows:

(1) A person is guilty of coercion of involuntary servitude if he or she coerces, as defined in RCW 9A.36.070, another person to perform labor or services by:

(a) Withholding or threatening to withhold or destroy documents relating to a person's immigration status; or

(b) Threatening to notify law enforcement officials that a person is present in the United States in violation of federal immigration laws.

(2) Coercion does not include reports to law enforcement that a person is present in the United States in violation of federal immigration laws.

(3) A person may commit coercion of involuntary servitude regardless of whether the person provides any sort of compensation or benefits to the person who is coerced.

(4) Coercion of involuntary servitude is a class C felony.

**Sec. 2.** RCW 9A.40.010 and 2011 c 336 s 363 and 2011 c 111 s 2 are each reenacted and amended to read as follows:

The following definitions apply in this chapter:

(1) "Abduct" means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.

(2) "Commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

(3) "Forced labor" means knowingly providing or obtaining labor or services of a person by: (a) Threats of serious harm to, or physical restraint against, that person or another person; or (b) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

(4) "Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, ~~((or))~~ by the use of threat of coercion through law or legal process, or as set forth in section 1 of this act. For the purposes of this subsection, "coercion" has the same meaning as provided in RCW 9A.36.070.

(5) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

(6) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her

liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm.

Passed by the Senate February 12, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 53

[Senate Bill 6358]

### HIGHER EDUCATION—FINANCIAL AID INFORMATION

AN ACT Relating to disseminating financial aid policies to admitted and prospective students; adding a new section to chapter 28B.92 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that in recent years not all students eligible for the state need grant program have received an award due to limited funds and unfamiliarity with disbursement policies. Therefore, it is the intent of the legislature to ensure that institutions of higher education clearly disseminate their financial aid policies to admitted and prospective students.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28B.92 RCW to read as follows:

Community and technical colleges shall provide financial aid application due dates and information on whether or not financial aid will be awarded on a rolling basis to their admitted students at the time of acceptance. Institutions of higher education are encouraged to post financial aid application dates and distribution policies on their web sites.

Passed by the Senate February 14, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 54

[Substitute Senate Bill 6442]

### ALCOHOL—CIDER—GROWLER SALES

AN ACT Relating to allowing sales of growlers of cider; and adding a new section to chapter 66.28 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 66.28 RCW to read as follows:

(1) Licensees holding either a license that permits or a license with an endorsement that permits the sale of beer to a purchaser in a container supplied by the licensee or a sanitary container brought to the premises by the purchaser and filled at the tap at the time of sale may similarly sell cider to a purchaser in such a container. Nothing in this section relieves a licensee from complying with federal law.

(2) For purposes of this section, "cider" has the same meaning as in RCW 66.24.210(6).

Passed by the Senate February 13, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 55

[Substitute Senate Bill 6446]

### COUNTY GAME LANDS—PAYMENT IN LIEU OF TAXES

AN ACT Relating to payments in lieu of taxes on county game lands; amending RCW 77.12.203; and providing an effective date.

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

**Sec. 1.** RCW 77.12.203 and 2013 2nd sp.s. c 4 s 999 are each amended to read as follows:

(1) Except as provided in subsection (5) of this section and notwithstanding RCW 84.36.010 or other statutes to the contrary, the director ~~((shall))~~ must pay by April 30th of each year on game lands, regardless of acreage, in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount ~~((shall))~~ may not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, water access sites, tidelands, or public fishing areas ~~((of less than one hundred acres))~~.

(2) "Game lands," as used in this section and RCW 77.12.201, means those tracts ~~((one hundred acres or larger))~~, regardless of acreage, owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access or recreation purposes with federal funds in the Snake River drainage basin ~~((shall be))~~ are considered game lands regardless of acreage.

(3) This section ~~((shall))~~ does not apply to lands transferred after April 23, 1990, to the department from other state agencies.

(4) The county ~~((shall))~~ must distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county ~~((shall))~~ must distribute the



amount received under this section for weed control to the appropriate weed district.

(5) For the 2011-2013 and 2013-2015 fiscal biennia, the director (~~shall~~) must pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes and (~~shall~~) must be distributed as follows:

**County**

|                   |         |
|-------------------|---------|
| Adams .....       | 1,909   |
| Asotin .....      | 36,123  |
| Chelan .....      | 24,757  |
| Columbia.....     | 7,795   |
| Ferry .....       | 6,781   |
| Garfield .....    | 4,840   |
| Grant .....       | 37,443  |
| Kittitas .....    | 143,974 |
| Klickitat.....    | 21,906  |
| Lincoln.....      | 13,535  |
| Okanogan.....     | 151,402 |
| Pend Oreille..... | 3,309   |
| Yakima.....       | 126,225 |

These amounts (~~shall~~) may not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, water access sites, tidelands, or public fishing areas (~~(of less than one hundred acres)~~).

**NEW SECTION. Sec. 2.** This act takes effect July 1, 2015.

Passed by the Senate February 14, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

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**CHAPTER 56**

[Engrossed Substitute Senate Bill 6450]

**ON-WATER DWELLINGS**

AN ACT Relating to on-water dwellings; amending RCW 90.58.270; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature recognizes that all Washington residents benefit from the unique aesthetic, recreational, and economic opportunities that are derived from the state's aquatic resources, including its navigable waters and shoreline areas. The legislature also recognizes that, as affirmed in chapter 212, Laws of 2011, existing floating homes are an important cultural amenity and an element of the state's maritime history and economy.

The 2011 legislation, which clarified the legal status of floating homes, was intended to ensure the vitality and long-term survival of existing floating single-family home communities.

(2) The legislature finds that further clarification of the status of other residential uses on water that meet specific requirements and share important cultural, historical, and economic commonalities with floating homes, is necessary.

(3) The legislature, therefore, intends to: Preserve the existence and vitality of current, floating on-water residential uses; establish greater clarity and regulatory uniformity for these uses; and respect the well-established authority of local governments to determine compliance with regulatory requirements applicable to their jurisdiction.

**Sec. 2.** RCW 90.58.270 and 2011 c 212 s 2 are each amended to read as follows:

(1) Nothing in this ((statute)) section shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) (~~hereof~~) of this section.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

(5)(a) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use.

(b) For the purposes of this subsection:

(i) "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(ii) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

(6)(a) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or

mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

(b) For the purpose of this subsection, "floating on-water residence" means any floating structure other than a floating home, as defined under subsection (5) of this section, that: (i) Is designed or used primarily as a residence on the water and has detachable utilities; and (ii) whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

**NEW SECTION. Sec. 3.** This act does not affect the application of any other applicable permits, authorizations, or authorities.

Passed by the Senate February 13, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

## CHAPTER 57

[Substitute Senate Bill 5859]

### RURAL HOSPITALS—MEDICARE SERVICES—ENHANCED PAYMENTS

AN ACT Relating to providing enhanced payment to small rural hospitals that meet the criteria of a sole community hospital; amending RCW 74.09.5225; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that promoting a financially viable health care system in all parts of the state is a critical interest. The federal centers for medicare and medicaid services has recognized the crucial role hospitals play in providing care in rural areas by creating the sole community hospital program, which allows certain small rural hospitals to receive enhanced payments for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medicaid program for sole community hospitals will promote the long-term financial viability of the rural health care system in those communities.

**Sec. 2.** RCW 74.09.5225 and 2011 1st sp.s. c 15 s 31 are each amended to read as follows:

(1) Payments for recipients eligible for medical assistance programs under this chapter for services provided by hospitals, regardless of the beneficiary's managed care enrollment status, shall be made based on allowable costs incurred during the year, when services are provided by a rural hospital certified by the centers for medicare and medicaid services as a critical access hospital. Any additional payments made by the authority for the healthy options program shall be no more than the additional amounts per service paid under this section for other medical assistance programs.

(2) Beginning on July 24, 2005, a moratorium shall be placed on additional hospital participation in critical access hospital payments under this section. However, rural hospitals that applied for certification to the centers for medicare and medicaid services prior to January 1, 2005, but have not yet completed the process or have not yet been approved for certification, remain eligible for medical assistance payments under this section.

(3)(a) Beginning January 1, 2015, payments for recipients eligible for medical assistance programs under this chapter for services provided by a hospital, regardless of the beneficiary's managed care enrollment status, shall be increased to one hundred twenty-five percent of the hospital's fee-for-service rates, when services are provided by a rural hospital that:

(i) Was certified by the centers for medicare and medicaid services as a sole community hospital as of January 1, 2013;

(ii) Had a level III adult trauma service designation from the department of health as of January 1, 2014;

(iii) Had less than one hundred fifty acute care licensed beds in fiscal year 2011; and

(iv) Is owned and operated by the state or a political subdivision.

(b) The enhanced payment rates under this subsection shall be considered the hospital's medicaid payment rate for purposes of any other state or private programs that pay hospitals according to medicaid payment rates.

(c) Hospitals participating in the certified public expenditures program may not receive the increased reimbursement rates provided in this subsection (3) for inpatient services.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 19, 2014.

Filed in Office of Secretary of State March 19, 2014.

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## CHAPTER 58

[Second Engrossed Substitute House Bill 1117]

REAL PROPERTY—TRANSFER ON DEATH

AN ACT Relating to the transfer of real property by deed taking effect at the grantor's death; amending RCW 11.07.010, 11.11.010, 11.18.200, 11.86.011, 11.94.050, 82.45.010, 82.45.197, 82.45.150, and 84.33.140; reenacting and amending RCW 11.02.005 and 84.34.108; adding a new chapter to Title 64 RCW; and providing a contingent effective date.

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

**NEW SECTION. Sec. 1. SHORT TITLE.** This chapter may be cited as the Washington uniform real property transfer on death act.

**NEW SECTION. Sec. 2. DEFINITIONS.** The following definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beneficiary" means a person that receives property under a transfer on death deed.

(2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

(3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant with a right to survivorship. The term does not include a tenant in common or owner of community property.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public

corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(6) "Transfer on death deed" means a deed authorized under this chapter.

(7) "Transferor" means an individual who makes a transfer on death deed.

**NEW SECTION. Sec. 3. APPLICABILITY.** This chapter applies to a transfer on death deed made before, on, or after the effective date of this section by a transferor dying on or after the effective date of this section.

**NEW SECTION. Sec. 4. NONEXCLUSIVITY.** The chapter does not affect any method of transferring property otherwise permitted under the law of this state.

**NEW SECTION. Sec. 5. TRANSFER ON DEATH DEED AUTHORIZED.** An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed. A transfer on death deed may not be used to effect a deed in lieu of foreclosure of a deed of trust.

**NEW SECTION. Sec. 6. TRANSFER ON DEATH DEED REVOCABLE.** A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

**NEW SECTION. Sec. 7. TRANSFER ON DEATH DEED NONTESTAMENTARY.** A transfer on death deed is nontestamentary.

**NEW SECTION. Sec. 8. CAPACITY OF TRANSFEROR.** The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

**NEW SECTION. Sec. 9. REQUIREMENTS.** A transfer on death deed:

(1) Except as otherwise provided in subsection (2) of this section, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) Must be recorded before the transferor's death in the public records in the office of the auditor of the county where the property is located.

**NEW SECTION. Sec. 10. NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION NOT REQUIRED.** A transfer on death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

**NEW SECTION. Sec. 11. REVOCATION BY INSTRUMENT AUTHORIZED; REVOCATION BY ACT NOT PERMITTED.** (1) Subject to subsection (2) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(a) Is one of the following:

(i) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(ii) An instrument of revocation that expressly revokes the deed or part of the deed; or

(iii) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(b) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county auditor of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

(a) Revocation by a transferor does not affect the deed as to the interest of another transferor;

(b) A deed of joint owners is revoked only if it is revoked by all of the joint owners living at the time that the revocation is recorded; and

(c) A deed of community property by both spouses or by both domestic partners is revoked only if it is revoked by both of the spouses or domestic partners, provided that if only one of the spouses or domestic partners is then surviving, that spouse or domestic partner may revoke the deed.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property.

**NEW SECTION. Sec. 12. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE.** During a transferor's life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) Create a legal or equitable interest in favor of the designated beneficiary; or

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

**NEW SECTION. Sec. 13. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH.** (1) Except as otherwise provided in this section, or in RCW 11.07.010, and 11.05A.030, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to (b) of this subsection, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to (d) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to chapter 65.08 RCW, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death, including liens recorded within twenty-four months after the transferor's death under RCW 41.05A.090 and 43.20B.080. For purposes of this subsection and chapter 65.08 RCW, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

(a) Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(b) The last surviving joint owner, the transfer on death deed is effective.

(4) If the property that is the subject of a transfer on death deed is community property and:

(a) The transferor is married and is not joined in the deed by the transferor's spouse or is in a registered domestic partnership and is not joined in the deed by the transferor's domestic partner, the transferor's interest in the property is transferred to the designated beneficiary in accordance with the deed on the transferor's death; or

(b) The transferor is married and is joined in the deed by the transferor's spouse, or is in a registered domestic partnership and is joined in the deed by the transferor's domestic partner, and:

(i) Is survived by the transferor's spouse or domestic partner, the deed is not effective upon the transferor's death; or

(ii) Is the surviving spouse or domestic partner, the transfer on death deed is effective on the transferor's death with respect to the transferor's interest in the property as of the time of the transferor's death.

(5) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

**NEW SECTION. Sec. 14. DISCLAIMER.** A beneficiary may disclaim all or part of the beneficiary's interest as provided by chapter 11.86 RCW.

**NEW SECTION. Sec. 15. LIABILITY FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES.** A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in RCW 11.18.200, 11.42.085, and chapter 11.54 RCW.

**NEW SECTION. Sec. 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**NEW SECTION. Sec. 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section

101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

**Sec. 18.** RCW 11.02.005 and 2011 c 327 s 1 are each reenacted and amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(2) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(3) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(4) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(5) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(6) "Heirs" denotes those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Internal revenue code" means the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2001.

(8) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

(9) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(10) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, transfer on death deed, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit



plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(11) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(12) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(13) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the decedent but who left issue surviving the decedent; each share of a deceased person in the nearest degree (~~shall~~) must be divided among those of the deceased person's issue who survive the decedent and have no ancestor then living who is in the line of relationship between them and the decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the decedent.

(14) References to "section 2033A" of the internal revenue code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title (~~shall be~~) are deemed to refer to the comparable or corresponding provisions of section 2057 of the internal revenue code, as added by section 6006(b) of the internal revenue service restructuring act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" (~~shall be~~) are deemed to mean the section 2057 deduction.

(15) "Settlor" has the same meaning as provided for "trustor" in this section.

(16) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(17) "Surviving spouse" or "surviving domestic partner" does not include an individual whose marriage to or state registered domestic partnership with the decedent has been terminated, dissolved, or invalidated unless, by virtue of a subsequent marriage or state registered domestic partnership, he or she is married to or in a domestic partnership with the decedent at the time of death. A decree of separation that does not terminate the status of spouses or domestic partners is not a dissolution or invalidation for purposes of this subsection.

(18) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(19) "Trustor" means a person, including a testator, who creates, or contributes property to, a trust.

(20) "Will" means an instrument validly executed as required by RCW 11.12.020.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

**Sec. 19.** RCW 11.07.010 and 2008 c 6 s 906 are each amended to read as follows:

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry of a decree of dissolution of marriage or state registered domestic partnership or a declaration of invalidity or certification of termination of a state registered domestic partnership.

(2)(a) If a marriage or state registered domestic partnership is dissolved or invalidated, or a state registered domestic partnership terminated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse or state registered domestic partner, is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse or former state registered domestic partner, failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity or termination of state registered domestic partnership.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution, declaration of invalidity, or other court order requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or former state registered domestic partner or children of the marriage or domestic partnership, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or former state registered domestic partner or children of the marriage or domestic partnership do not exist at the decedent's death;

(iii) A court order requires that the decedent maintain a nonprobate asset for the benefit of another, payable on the decedent's death either outright or in a trust, and other nonprobate assets of the decedent fulfilling such a requirement do not exist at the decedent's death; or

(iv) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree, declaration, termination of state registered domestic partnership, or for any other reason, immediately after the entry of the decree of dissolution, declaration of invalidity, or termination of state registered domestic partnership.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or

transferring an interest in a nonprobate asset to a decedent's former spouse or state registered domestic partner, whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage or termination of the state registered domestic partnership. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage or termination of state registered domestic partnership, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse or former state registered domestic partner, and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse or former state registered domestic partner, and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also

must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse or state registered domestic partner, by reason of the dissolution or invalidation of marriage or termination of state registered domestic partnership, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse, former state registered domestic partner, or other person, for value and without actual knowledge, or who receives from a former spouse, former state registered domestic partner, or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse, former state registered domestic partner, or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse, former state registered domestic partner, or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage or provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5)(a) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

~~((a))~~ (i) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

~~((b))~~ (ii) A payable-on-death, trust, or joint with right of survivorship bank account;

~~((e))~~ (iii) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death;

~~((d))~~ (iv) Transfer on death beneficiary designations of a transfer on death or pay on death security, or joint tenancy or joint tenancy with right of survivorship designations of a security, if such designations are authorized under Washington law;

~~((e))~~ (v) A transfer on death, pay on death, joint tenancy, or joint tenancy with right of survivorship brokerage account;

~~((f))~~ (vi) A transfer on death deed;

(vii) Unless otherwise specifically provided therein, a contract wherein payment or performance under that contract is affected by the death of the person; or

~~((g))~~ (viii) Unless otherwise specifically provided therein, any other written instrument of transfer, within the meaning of RCW 11.02.091(3), containing a provision for the nonprobate transfer of an asset at death.

(b) For the general definition in this title of "nonprobate asset," see RCW 11.02.005~~((+5))~~ (10) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7). For the purposes of this chapter, a "bank account" includes an account into or from which cash deposits and withdrawals can be made, and includes demand deposit accounts, time deposit accounts, money market accounts, or certificates of deposit, maintained at a bank, savings and loan association, credit union, brokerage house, or similar financial institution.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

**Sec. 20.** RCW 11.11.010 and 2008 c 6 s 909 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Actual knowledge" means:

(i) For a financial institution, whether acting as personal representative or otherwise, or other third party in possession or control of a nonprobate asset, receipt of written notice that: (A) Complies with RCW 11.11.050; (B) pertains to the testamentary disposition or ownership of a nonprobate asset in its possession or control; and (C) is received by the financial institution or third party after the death of the owner in a time sufficient to afford the financial institution or third party a reasonable opportunity to act upon the knowledge; and

(ii) For a personal representative that is not a financial institution, personal knowledge or possession of documents relating to the testamentary disposition or ownership of a nonprobate asset of the owner sufficient to afford the personal representative reasonable opportunity to act upon the knowledge, including reasonable opportunity for the personal representative to provide the written notice under RCW 11.11.050.

(b) For the purposes of (a) of this subsection, notice of more than thirty days is presumed to be notice that is sufficient to afford the party a reasonable opportunity to act upon the knowledge, but notice of less than five business days

is presumed not to be a sufficient notice for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(2) "Beneficiary" means the person designated to receive a nonprobate asset upon the death of the owner by means other than the owner's will.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws.

(4) "Date of will" means, as to any nonprobate asset, the date of signature of the will or codicil that refers to the asset and disposes of it.

(5) "Designate" means a written means by which the owner selects a beneficiary, including but not limited to instruments under contractual arrangements and registration of accounts, and "designation" means the selection.

(6) "Financial institution" means: A bank, trust company, mutual savings bank, savings and loan association, credit union, broker, or issuer of stock or its transfer agent.

(7)(a) "Nonprobate asset" means a nonprobate asset within the meaning of RCW 11.02.005, but excluding the following:

(i) A right or interest in real property passing under a joint tenancy with right of survivorship;

(ii) A deed or conveyance for which possession has been postponed until the death of the owner;

(iii) A transfer on death deed;

(iv) A right or interest passing under a community property agreement; and

~~((iv))~~ (v) An individual retirement account or bond.

(b) For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse or former domestic partner upon dissolution of marriage or state registered domestic partnership or declaration of invalidity of marriage or state registered domestic partnership, see RCW 11.07.010(5).

(8) "Owner" means a person who, during life, has beneficial ownership of the nonprobate asset.

(9) "Request" means a request by the beneficiary for transfer of a nonprobate asset after the death of the owner, if it complies with all conditions of the arrangement, including reasonable special requirements concerning necessary signatures and regulations of the financial institution or other third party, or by the personal representative of the owner's estate or the testamentary beneficiary, if it complies with the owner's will and any additional conditions of the financial institution or third party for such transfer.

(10) "Testamentary beneficiary" means a person named under the owner's will to receive a nonprobate asset under this chapter, including but not limited to the trustee of a testamentary trust.

(11) "Third party" means a person, including a financial institution, having possession of or control over a nonprobate asset at the death of the owner, including the trustee of a revocable living trust and surviving joint tenant or tenants.

**Sec. 21.** RCW 11.18.200 and 1999 c 42 s 605 are each amended to read as follows:

(1) Unless expressly exempted by statute, a beneficiary of a nonprobate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities,

claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset. The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities, claims, the asset's fair share of expenses of administration, and the asset's share of any applicable estate taxes under chapter ((83.110)) 83.110A RCW. Before making demand that a beneficiary of a nonprobate asset account to the personal representative, the personal representative ((shall)) must give notice to the beneficiary, in the manner provided in chapter 11.96A RCW, that the beneficiary is liable to account under this section.

(2) The following rules govern in applying subsection (1) of this section:

(a) A beneficiary of property passing at death under a community property agreement takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section. However, assets existing as community or separate property immediately before the decedent's death under the community property agreement are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(b) A beneficiary of property held in joint tenancy form with right of survivorship, including without limitation United States savings bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(c) A beneficiary of payable-on-death or trust bank accounts, bonds, securities, or similar obligations, including without limitation United States bonds or similar obligations, takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(d) A beneficiary of a transfer on death deed or of deeds or conveyances made by the decedent if possession has been postponed until the death of the decedent takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the extent of the decedent's beneficial ownership interest in the property immediately before death.

(e) A trust for the decedent's use of which the decedent is the grantor is subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section, to the same extent as the trust was subject to claims of the decedent's creditors immediately before death under RCW 19.36.020.

(f) A trust not for the use of the grantor but of which the decedent is the grantor and that becomes effective or irrevocable only upon the decedent's death is subject to the decedent's claims, liabilities, estate taxes, and expenses of administration as described in subsection (1) of this section.

(g) Anything in this section to the contrary notwithstanding, nonprobate assets that existed as community property immediately before the decedent's death are subject to the decedent's liabilities and claims to the same extent that they would have been had they been assets of the probate estate.

(h) The liability of a beneficiary of life insurance is governed by chapter 48.18 RCW.

(i) The liability of a beneficiary of pension or retirement employee benefits is governed by chapter 6.15 RCW.

(j) An inference may not be drawn from (a) through (i) of this subsection that a beneficiary of nonprobate assets other than those assets specifically described in (a) through (i) of this subsection does or does not take the assets subject to claims, liabilities, estate taxes, and administration expenses as described in subsection (1) of this section.

(3) Nothing in this section derogates from the rights of a person interested in the estate to recover any applicable estate tax under chapter ~~((83.110))~~ 83.110A RCW or from the liability of any beneficiary for estate tax under chapter ~~((83.110))~~ 83.110A RCW.

(4) Nonprobate assets that may be responsible for the satisfaction of the decedent's general liabilities and claims abate together with the probate assets of the estate in accord with chapter 11.10 RCW.

**Sec. 22.** RCW 11.86.011 and 1989 c 34 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) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property. "Interest" includes, but is not limited to, an interest created in any of the following manners:

- (a) By intestate succession;
- (b) Under a will;
- (c) Under a trust;
- (d) By succession to a disclaimed interest;
- (e) By virtue of an election to take against a will;
- (f) By creation of a power of appointment;
- (g) By exercise or nonexercise of a power of appointment;
- (h) By an inter vivos gift, whether outright or in trust;
- (i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of RCW 30.22.040;
- (j) Under an insurance or annuity contract;
- (k) By surviving the death of another joint tenant;
- (l) Under an employee benefit plan;
- (m) Under an individual retirement account, annuity, or bond;
- (n) Under a community property agreement; ~~((¶))~~
- (o) By surviving the death of a transferor of a transfer on death deed; or
- (p) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

(3) "Creator of the interest" means a person who establishes, declares, or otherwise creates an interest.



(4) "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

(5) "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

(7)(a) "Date of the transfer" means:

~~((a))~~ (i) For an inter vivos transfer, the date of the creation of the interest; or

~~((b))~~ (ii) For a transfer upon the death of the creator of the interest, the date of the death of the creator.

(b) A joint tenancy interest of a deceased joint tenant ~~((shall be))~~ is deemed to be transferred at the death of the joint tenant rather than at the creation of the joint tenancy.

**Sec. 23.** RCW 11.94.050 and 2011 c 327 s 4 are each amended to read as follows:

(1) Although a designated attorney-in-fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney-in-fact or agent ~~((shall have))~~ has all the powers the principal would have if alive and competent, the attorney-in-fact or agent ~~((shall))~~ does not have the power to make, amend, alter, or revoke the principal's wills or codicils, and ~~((shall))~~ does not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's life insurance, annuity, or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, transfer on death deeds, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091; to make any gifts of property owned by the principal; to exercise the principal's rights to distribute property in trust or cause a trustee to distribute property in trust to the extent consistent with the terms of the trust agreement; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust; or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney-in-fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

**Sec. 24.** RCW 82.45.010 and 2010 1st sp.s. c 23 s 207 are each amended to read as follows:

(1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or

interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a twelve-month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

~~((e))~~ (d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

~~((f))~~ (e) The partition of property by tenants in common by agreement or as the result of a court decree.

~~((g))~~ (f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

~~((f))~~ (g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

~~((g))~~ (h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

~~((h))~~ (i) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

~~((i))~~ (j) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

~~((j))~~ (k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

~~((k))~~ (l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

~~((l))~~ (m) The sale of any grave or lot in an established cemetery.

~~((m))~~ (n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

~~((n))~~ (o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

~~((o))~~ (p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

~~((p))~~ (q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss

because of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in ~~((p))~~ (q)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in ~~((p))~~ (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection ~~(3)((p))~~ (q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection ~~(3)((p))~~ (q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

~~((p))~~ (r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

**Sec. 25.** RCW 82.45.197 and 2008 c 269 s 1 are each amended to read as follows:

In order to receive an exemption from the tax in this chapter on real property transferred as a result of inheritance under RCW 82.45.010(3)(a), the following documentation must be provided:

(1) If the property is being transferred under the terms of a community property agreement, a copy of the recorded agreement and a certified copy of the death certificate;

(2) If the property is being transferred under the terms of a trust instrument, a certified copy of the death certificate and a copy of the trust instrument showing the authority of the grantor;

(3) If the property is being transferred under the terms of a probated will, a certified copy of the letters testamentary or in the case of intestate administration, a certified copy of the letters of administration showing that the grantor is the court-appointed executor, executrix, or administrator, and a certified copy of the death certificate;

(4) In the case of joint tenants with right of survivorship and remainder interests, a certified copy of the death certificate is recorded to perfect title;

(5) If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer, and confirming that the grantor is required to do so under the terms of the order; ~~((p))~~

(6) If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in subsections (1) through (5) of this section, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir to the property; or

(7) If the property is being transferred pursuant to a transfer on death deed, a certified copy of the death certificate is recorded to perfect title.

**Sec. 26.** RCW 82.45.150 and 1996 c 149 s 6 are each amended to read as follows:

All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and 82.32.090 (1) and ~~((8))~~ (10), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue ~~((shall))~~ **must** by rule provide for the effective administration of this chapter. The rules ~~((shall))~~ **must** prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right-of-way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative and except that a transfer on death deed need be verified only on behalf of the transferor. The department of revenue ~~((shall))~~ **must** annually conduct audits of transactions and affidavits filed under this chapter.

**Sec. 27.** RCW 84.33.140 and 2013 2nd sp.s. c 11 s 13 are each amended to read as follows:

(1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation must be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor must list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor must compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land are as follows:

| LAND GRADE | OPERABILITY CLASS | VALUES PER ACRE |
|------------|-------------------|-----------------|
|            | 1                 | \$234           |
| 1          | 2                 | 229             |
|            | 3                 | 217             |
|            | 4                 | 157             |
|            | 1                 | 198             |
| 2          | 2                 | 190             |
|            | 3                 | 183             |
|            | 4                 | 132             |
|            | 1                 | 154             |
| 3          | 2                 | 149             |
|            | 3                 | 148             |

|   |   |     |
|---|---|-----|
|   | 4 | 113 |
|   | 1 | 117 |
| 4 | 2 | 114 |
|   | 3 | 113 |
|   | 4 | 86  |
|   | 1 | 85  |
| 5 | 2 | 78  |
|   | 3 | 77  |
|   | 4 | 52  |
|   | 1 | 43  |
| 6 | 2 | 39  |
|   | 3 | 39  |
|   | 4 | 37  |
|   | 1 | 21  |
| 7 | 2 | 21  |
|   | 3 | 20  |
|   | 4 | 20  |
| 8 |   | 1   |

(3) On or before December 31, 2001, the department must adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and must certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department must:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section must be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment must be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values must be successively one year more recent.

(5) Land graded, assessed, and valued as forest land must continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner or transfer by a transfer on death deed, does not, by itself, result in removal of designation. The signed notice of continuance must be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section are due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land may not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient must annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land may not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation

under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor has the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

- (a) An application for designation as forest land is submitted; or
- (b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal applies only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal applies only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation must immediately be made upon the assessment and tax rolls. The assessor must revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation must be listed. Taxes based on the value of the land as forest land are assessed and payable up until the date of removal and taxes based on the true and fair value of the land are assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax is imposed on land removed from designation as forest land. The compensating tax is due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor must compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax is equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal



and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, becomes a lien on the land, which attaches at the time the land is removed from designation as forest land and has priority and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date will thereupon become delinquent. From the date of delinquency until paid, interest is charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section is imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i)(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For purposes of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax is imposed upon the current owner.

**Sec. 28.** RCW 84.34.108 and 2009 c 513 s 2, 2009 c 354 s 3, 2009 c 255 s 2, and 2009 c 246 s 3 are each reenacted and amended to read as follows:

(1) When land has once been classified under this chapter, a notation of the classification (~~shall~~) must be made each year upon the assessment and tax rolls and the land (~~shall~~) must be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner (~~shall~~) or transfer by a transfer on death deed does not, by itself, result in removal of classification. The notice of continuance (~~shall~~) must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (4) of this section (~~shall~~) become due and payable by the seller or transferor at time of sale. The auditor (~~shall~~) may not accept an instrument of conveyance

regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d)(i) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

(ii) The granting authority, upon request of an assessor, (~~shall~~) must provide reasonable assistance to the assessor in making a determination whether the land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance (~~shall~~) must be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after the removal of all or a portion of the land from current use classification under subsection (1) of this section, the assessor (~~shall~~) must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

(4) Unless the removal is reversed on appeal, the assessor (~~shall~~) must revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification (~~shall~~) must be listed and taxes (~~shall~~) must be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty (~~shall~~) must be imposed which (~~shall be~~) are due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor (~~shall~~) must compute the amount of additional tax, applicable interest, and penalty and the treasurer (~~shall~~) must mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty (~~shall~~) must be determined as follows:

(a) The amount of additional tax (~~shall be~~) is equal to the difference between the property tax paid as "open space land," "farm and agricultural land," or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest (~~shall be~~) is equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have

been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty (~~((shall be))~~) is as provided in RCW 84.34.080. The penalty (~~((shall))~~) may not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty(~~((shall))~~) become a lien on the land (~~((which shall attach))~~) that attaches at the time the land is removed from classification under this chapter and (~~((shall))~~) have priority to and (~~((shall))~~) must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any additional tax unpaid on its due date (~~((shall))~~) will thereupon become delinquent. From the date of delinquency until paid, interest (~~((shall))~~) must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section (~~((shall))~~) may not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section (~~((shall))~~) must be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(1)(i) The discovery that the land was classified under this chapter in error through no fault of the owner. For purposes of this subsection (6)(l), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of classification under this chapter or the failure of the assessor to remove the land from classification under this chapter.

(ii) For purposes of this subsection (6), the discovery that land was classified under this chapter in error through no fault of the owner is not the sole reason for removal of classification pursuant to subsection (1) of this section if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification under this chapter.

NEW SECTION. Sec. 29. Section 23 of this act takes effect if the Washington uniform power of attorney act (House/Senate Bill No. . . .) is not enacted during the 2014 regular legislative session.

NEW SECTION. Sec. 30. 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. 31. Sections 1 through 17 of this act constitute a new chapter in Title 64 RCW.

Passed by the House March 11, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 59

[Engrossed Second Substitute House Bill 1129]

### FERRY VESSEL REPLACEMENT

AN ACT Relating to ferry vessel replacement; amending RCW 47.60.322, 46.17.040, 46.17.050, and 46.17.060; and creating a new section.

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

**Sec. 1.** RCW 47.60.322 and 2011 1st sp.s. c 16 s 2 are each amended to read as follows:

(1) The capital vessel replacement account is created in the motor vehicle fund. All revenues generated from the vessel replacement surcharge under RCW 47.60.315(7) and service fees collected by the department of licensing or county auditor or other agent appointed by the director under RCW 46.17.040 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the construction or purchase of ferry vessels and to pay the principal and interest on

bonds authorized for the construction or purchase of ferry vessels. However, expenditures from the account must first be used to support the construction or purchase, including any applicable financing costs, of a ferry vessel with a carrying capacity of at least one hundred forty-four cars.

(2) The state treasurer may not transfer any moneys from the capital vessel replacement account except to the transportation 2003 account (nickel account) for debt service on bonds issued for the construction of ~~((a))~~ 144-car class ferry vessels.

**Sec. 2.** RCW 46.17.040 and 2011 c 171 s 55 are each amended to read as follows:

~~((A))~~ (1) The department, county auditor or other agent, or subagent appointed by the director shall collect a service fee of:

~~((+))~~ (a) Twelve dollars for changes in a certificate of title, with or without registration renewal, or for verification of record and preparation of an affidavit of lost title other than at the time of the certificate of title application or transfer; and

~~((2))~~ (b) Five dollars for a registration renewal, issuing a transit permit, or any other service under this section.

(2) Service fees collected under this section by the department or county auditor or other agent appointed by the director must be credited to the capital vessel replacement account under RCW 47.60.322.

**Sec. 3.** RCW 46.17.050 and 2010 c 161 s 505 are each amended to read as follows:

Before accepting a report of sale filed under RCW 46.12.650(2), the county auditor or other agent or subagent appointed by the director shall require the applicant to pay:

(1) The filing fee under RCW 46.17.005(1), the license plate technology fee under RCW 46.17.015, and the license service fee under RCW 46.17.025 to the county auditor or other agent; and

(2) The ~~((subagent))~~ service fee under RCW 46.17.040~~((2))~~ (1)(b) to the subagent.

**Sec. 4.** RCW 46.17.060 and 2010 c 161 s 507 are each amended to read as follows:

Before accepting a transitional ownership record filed under RCW 46.12.660, the county auditor or other agent or subagent appointed by the director shall require the applicant to pay:

(1) The filing fee under RCW 46.17.005(1), the license plate technology fee under RCW 46.17.015, and the license service fee under RCW 46.17.025 to the county auditor or other agent; and

(2) The ~~((subagent))~~ service fee under RCW 46.17.040~~((2))~~ (1)(b) to the subagent.

**NEW SECTION. Sec. 5.** This act applies to vehicle registrations that are due or become due on or after January 1, 2015, and certificate of title transactions that are processed on or after January 1, 2015.

Passed by the House March 10, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.  
 Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 60

[Substitute House Bill 1669]

### HIGHER EDUCATION—CHANGES TO DEGREE PROGRAMS

AN ACT Relating to self-supporting, fee-based programs at four-year institutions of higher education; and adding a new section to chapter 28B.15 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 28B.15 RCW to read as follows:

(1) When a decision is being considered to change an existing degree program that is supported by state funding to a program that is self-supporting and fee-based, the state universities, regional universities, and The Evergreen State College shall:

(a) Publicly notify prospective students, including notification in admission offers with an estimate of tuition and fees;

(b) Notify enrolled students and undergraduate or graduate student government associations at least six months before implementation with an estimate of tuition and fees; and

(c) Allow students currently enrolled in the program to continue in the state-supported program structure for a consecutive amount of time no greater than four years in length;

(2)(a) The state universities, regional universities, and The Evergreen State College shall each establish or designate a committee comprised of administrators, faculty, and students to create criteria upon which to evaluate, prior to a shift being made, the proposed shift of a degree program from a state-supported degree program to a self-supporting funding basis. Where possible, an existing budget or advisory committee shall be designated instead of establishing a new committee. When establishing evaluation criteria, the committee shall consider including the following:

(i) The financial health and sustainability of the program;

(ii) If moving the program to a self-supporting funding basis alters the availability of student financial aid;

(iii) The audience for the program, the format of the program, and the institutional priority for state funding of the program;

(iv) Demographics of students served and graduates practicing in typical fields of study; and

(v) Alternatives to shifting to a self-supporting funding basis including raising tuition within the state-funded context or program elimination;

(b) The committee that creates the criteria for moving a degree from a state-supported degree program to a self-supporting funding basis may also establish a process to periodically evaluate programs that have shifted from a state-supported program to a fee-based funding model for alignment with criteria established.

Passed by the House January 24, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.  
 Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 61

[Substitute House Bill 2105]

### PUBLIC MEETINGS—AGENDA POSTING

AN ACT Relating to promoting transparency in government by requiring public agencies with governing bodies to post agendas online in advance of meetings; adding a new section to chapter 42.30 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature intends to promote transparency in government and strengthen the Washington's open public meetings act. The legislature finds that it is in the best interest of citizens for public agencies with governing bodies to post meeting agendas on web sites before meetings. Full public review and inspection of meeting agendas will promote a greater exchange of information so the public can provide meaningful input related to government decisions.

**NEW SECTION. Sec. 2.** A new section is added to chapter 42.30 RCW to read as follows:

Public agencies with governing bodies must make the agenda of each regular meeting of the governing body available online no later than twenty-four hours in advance of the published start time of the meeting. An agency subject to provisions of this section is not required to post an agenda if it does not have a web site or if it employs fewer than ten full-time equivalent employees. Nothing in this section prohibits subsequent modifications to agendas nor invalidates any otherwise legal action taken at a meeting where the agenda was not posted in accordance with this section. Nothing in this section modifies notice requirements or shall be construed as establishing that a public body or agency's online posting of an agenda as required by this section is sufficient notice to satisfy public notice requirements established under other laws. Failure to post an agenda in accordance with this section shall not provide a basis for awarding attorney fees under RCW 42.30.120 or commencing an action for mandamus or injunction under RCW 42.30.130.

Passed by the House February 12, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 62

[Substitute House Bill 2125]

### HORSE RACING COMMISSION—DEPOSIT OF FINES

AN ACT Relating to removing the requirements that all fines collected be credited to the Washington horse racing commission class C purse fund account; and amending RCW 67.16.270.

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

**Sec. 1.** RCW 67.16.270 and 2004 c 246 s 1 are each amended to read as follows:



Upon making a determination that an individual or licensee has violated a commission rule, the board of stewards may assess a fine, suspend or revoke a person's license, or any combination of these penalties. The commission must adopt by rule standard penalties for a rules violation. All fines collected must be deposited in the Washington horse racing commission (~~class C purse fund account, created in RCW 67.16.285, and used as authorized in RCW 67.16.105(3)-~~) operating account. The funds accrued by the assessed fines will be used to support nonprofit race meets as authorized in RCW 67.16.280(2). If no dates for nonprofit racing are requested or approved, the fines will remain in the Washington horse racing commission operating account.

Passed by the House February 17, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 63

[Engrossed Substitute House Bill 2155]

### ALCOHOL—RETAILERS—THEFT PREVENTION

AN ACT Relating to preventing theft of alcoholic spirits from licensed retailers; amending RCW 66.08.030 and 66.08.050; and adding a new section to chapter 66.28 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 66.28 RCW to read as follows:

(1) Subject to the procedural requirements of subsection (3) of this section, the board is authorized to regulate spirits retailers licensed under RCW 66.24.630 for the purpose of reducing the theft of spirits from the premises of such retailers. The authority of the board to implement the regulatory measures set forth in this section requires a finding by the board that a licensee is experiencing an unacceptable rate of spirits theft from its premises. For the purposes of this section, "unacceptable rate of spirits theft" means two or more thefts of spirits from a licensee in a six-month period and that result in a minor unlawfully using or gaining possession of spirits, or that involves, or results in, adults unlawfully providing spirits to minors, and where such thefts result in an incident report being generated by a law enforcement agency.

(2) The regulatory measures that may be considered and implemented under this section may require the imposition of one or more of the following requirements on licensees who are experiencing an unacceptable rate of spirits theft:

(a) Participation in one or more consultations with an authorized representative of the board to discuss and analyze spirits theft issues;

(b) The implementation of inventory control and/or other recordkeeping system designed to reveal and track spirits theft;

(c) The structural modification or relocation of the areas where spirits are displayed or stored;

(d) The installation of adequate in store security systems;

(e) The employment of a sufficient number of staff for the purpose of monitoring display, checkout, and storage areas; and

(f) Requiring additional training for the licensee's staff.

(3) The imposition of the regulatory provisions authorized under subsection (2) of this section are subject to the following procedural steps and requirements:

(a) If a state or local law enforcement agency obtains information indicating that a licensee is experiencing an unacceptable rate of spirits theft, the law enforcement agency is granted the discretionary authority to initiate and participate in, on a voluntary basis, the procedures outlined in this subsection (3). Should the law enforcement agency opt to initiate the investigative and consultation procedures set forth in this subsection (3), the law enforcement agency must first contact the licensee's manager and/or owner to inform him or her of such alleged theft and arrange a meeting with the licensee's manager or owner to discuss theft issues and possible solutions. This first contact by the law enforcement agency with the licensee must occur prior to the law enforcement agency informing the board of the alleged theft issues and thus initiating the procedures set forth in (c) through (h) of this subsection. At this early stage of the law enforcement consultation process, the board may not be involved in the investigation of the theft allegation until such time as the law enforcement agency has had an opportunity to consult with the licensee's manager or owner as provided under this subsection (3)(a).

(b) Following the initial consultation between the law enforcement agency and the licensee as required under (a) of this subsection, the law enforcement agency is granted the discretionary authority to forego any further consultation with the licensee and may terminate its investigation of the theft allegation. However, if the law enforcement agency opts to continue the consultation process with the licensee and proceed with its investigation, the law enforcement agency must endeavor to work with the licensee to identify theft issues and reach cooperative agreements regarding measures that should be taken to eliminate spirits theft problems.

(c) If during the consultation process outlined under (a) and (b) of this subsection the law enforcement agency determines that no spirits theft problem exists at the premises of the licensee, or that the licensee has taken the steps necessary to adequately address the theft problem, then the procedural processes outlined in this section may be terminated at the discretion of the law enforcement agency without the involvement of the board. However, if the law enforcement agency finds that a spirits theft problem exists at the licensee's premises and the licensee either refuses or fails to implement remedial measures adequate to address the theft problem, or otherwise fails to cooperate with the law enforcement agency, then the law enforcement agency must formally inform the board in writing regarding the licensee's lack of cooperation in resolving its spirits theft problem.

(d) Upon the receipt of law enforcement agency notification as required under (c) of this subsection, the board must provide written notification to the licensee of the alleged theft problem and may demand that the licensee participate in a consultation process involving a representative of the board and the licensee. The reporting law enforcement agency may be included in this consultation process at the discretion of the board and upon the agreement of the law enforcement agency. The licensee's participation in the consultation process is mandatory and the licensee is entitled to at least thirty days' notice by the board. In the event a licensee fails to attend or otherwise cooperate in initial or

subsequent consultations, the board is authorized to suspend the licensee's spirits retail license until such time as the retailer is in compliance with the requirements of this subsection (3)(d).

(e) At the consultation, the board must provide the licensee with any information or evidence pertinent to any allegation that the retailer has an unacceptable spirits theft rate. The licensee must be provided with a reasonable opportunity to respond and present evidence, and, if necessary, the consultation may be continued at the discretion of the board to allow adequate time for the licensee to prepare such response.

(f) At the conclusion of the initial consultation process, if the board finds that the licensee has an unacceptable spirits theft rate, it may develop a corrective action plan outlining the remedial measures that must be taken by the licensee pursuant to subsection (2) of this section. In developing the plan, the board must make a concerted effort to obtain voluntary participation in the plan by the licensee. At every step in the consultation and corrective action plan process, the board is encouraged to work with the licensee in a cooperative manner and, where possible, to strive for voluntary agreements with the licensee. However, in the absence of licensee cooperation or agreement, the board is authorized to unilaterally develop and enforce a corrective action plan as authorized under this section. Once the plan is finalized, it must be filed with the board and a copy provided to the licensee either personally or through certified mail.

(g) Not more than thirty days after the filing and service of the original corrective action plan, the board must schedule one or more follow up consultations with the licensee. The purpose of these consultations is to review the licensee's performance with respect to the requirements of the corrective action plan and to generally assess the licensee's progress in addressing spirits theft issues. If the licensee is following the corrective action plan but is continuing to experience an unacceptable spirits theft rate, then the board and the licensee may review and revise the plan as deemed necessary by the board. Following the filing of a revised plan, the board may schedule one or more follow-up consultations at its discretion.

(h) During the review process established in (g) of this subsection, if the board finds that the licensee has failed to comply with the requirements of the original or revised corrective action plan the board may:

(i) Demand that the licensee take remedial steps so as to be compliant with the corrective action plan and schedule an additional follow-up consultation at the board's discretion; or

(ii) If the licensee's noncompliance is deemed to be willful, suspend the retailer's spirits retail license for a period to be determined by the board by rule.

(i) If a licensee remains consistently noncompliant with the original corrective action plan and any revised plans for a period of at least nine months, then the board is authorized to suspend or revoke the licensee's spirits retail license.

(4) The board is granted the rule-making authority necessary to implement and enforce the provisions of this section pertaining to the regulation of licensees deemed to have unacceptable spirits theft rates.

(5) If the board suspends or revokes a licensee's spirits retail license under this section, the licensee may appeal and request a hearing under chapter 34.05 RCW, the administrative procedure act.

**Sec. 2.** RCW 66.08.030 and 2012 c 2 s 204 are each amended to read as follows:

The power of the board to make regulations under chapter 34.05 RCW extends to:

(1) Prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(2) Prescribing an official seal and official labels and stamps and determining the manner in which they must be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(3) Prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title, and the qualifications for receiving a permit or license issued under this title, 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 must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(4) Prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(5) Prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same is kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(6) Regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(7) Prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(8) Prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(9) Prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(10) Regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(11) Prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(12) Prescribing the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer, wines, and spirits, and regulating the sale of beer, wines, and spirits thereunder;

(13) Specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers must deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(14) Providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(15) Providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(16) Providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(17) Providing for the giving of fidelity bonds by any or all of the employees of the board. However, the premiums therefor must be paid by the board;

(18) Providing for the shipment of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(19) Prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(20) Seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board. However, nothing herein contained may be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages;

(21) Monitoring and regulating the practices of license holders as necessary in order to prevent the theft and illegal trafficking of liquor pursuant to section 1 of this act.

**Sec. 3.** RCW 66.08.050 and 2012 c 2 s 107 are each amended to read as follows:

The board, subject to the provisions of this title and the rules, must:

(1) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(2) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(3) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(4) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(5) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(6) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program must cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(7) Monitor and regulate the practices of licensees as necessary in order to prevent the theft and illegal trafficking of liquor pursuant to section 1 of this act;

(8) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and has full power to do each and every act necessary to the conduct of its regulatory functions, including all supplies procurement, preparation and approval of forms, and every other undertaking necessary to perform its regulatory functions whatsoever, subject only to audit by the state auditor. However, the board has no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language or to restrict advertising of lawful prices.

Passed by the House February 17, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 64

[Second Substitute House Bill 2163]

### DEXTROMETHORPHAN

AN ACT Relating to dextromethorphan; adding a new chapter to Title 69 RCW; prescribing penalties; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Common carrier" means any person who holds himself or herself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

(2) "Finished drug product" means a drug legally marketed under the federal food, drug, and cosmetic act, 21 U.S.C. 321 et seq., that is in finished dosage form.

(3) "Proof of age" means any document issued by a governmental agency that contains a description or photograph of the person and gives the person's

date of birth, including a passport, military identification card, or driver's license.

(4) "Unfinished dextromethorphan" means dextromethorphan in any form, compound, mixture, or preparation that is not a drug in finished dosage form.

**NEW SECTION. Sec. 2.** (1) A person making a retail sale of a finished drug product containing any quantity of dextromethorphan must require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be twenty-five years of age or older.

(2) It is unlawful for any:

(a) Commercial entity to knowingly or willfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person less than eighteen years of age; or

(b) Person who is less than eighteen years of age to purchase a finished drug product containing any quantity of dextromethorphan;

(3) Subsection (2)(a) and (b) of this section do not apply if an individual under eighteen years of age:

(a) Supplies proof at the time of sale that such individual is actively enrolled in the military and presents a valid military identification card; or

(b) Supplies proof of emancipation.

(4)(a) Any manufacturer, distributor, or retailer whose employee or representative, during the course of the employee's or representative's employment or association with that manufacturer, distributor, or retailer sells or trades dextromethorphan in violation of subsection (2)(a) of this section must be given a written warning by a law enforcement agency for the first offense. For any subsequent offense, the manufacturer, distributor, or retailer is guilty of a class 1 civil infraction as provided in RCW 7.80.120, except for any manufacturer, distributor, or retailer who demonstrates a good faith effort to comply with the requirements of this chapter.

(b) Any employee or representative of a manufacturer, distributor, or retailer who, during the course of the employee's or representative's employment or association with that manufacturer, distributor, or retailer sells or trades dextromethorphan in violation of subsection (2)(a) of this section must be given a written warning by a law enforcement agency for the first offense. For any subsequent offense, the employee or representative is guilty of a class 1 civil infraction as provided in RCW 7.80.120.

(c) Any person who purchases dextromethorphan in violation of subsection (2)(b) of this section must be given a written warning by a law enforcement agency for the first offense. For any subsequent offense, the person is guilty of a class 1 civil infraction as provided in RCW 7.80.120.

**NEW SECTION. Sec. 3.** The trade association representing manufacturers of dextromethorphan shall supply to the pharmacy quality assurance commission and requesting licensed retailers an initial list of products containing dextromethorphan that its members market. This list shall be updated on an annual basis. The trade association representing manufacturers of dextromethorphan shall make other reasonable efforts to communicate the requirements of this act.

**NEW SECTION. Sec. 4.** (1) Nothing in this chapter is construed to impose any compliance requirement on a retail entity other than manually obtaining and verifying proof of age as a condition of sale, including placement of products in a specific place within a store, other restrictions on consumers' direct access to finished drug products, or the maintenance of transaction records.

(2) The provisions of this chapter do not apply to medication containing dextromethorphan that is sold pursuant to a valid prescription.

**NEW SECTION. Sec. 5.** This chapter preempts any ordinance regulating the sale, distribution, receipt, or possession of dextromethorphan enacted by a county, city, town, or other political subdivision of this state, and dextromethorphan is not subject to further regulation by such subdivisions.

**NEW SECTION. Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 69 RCW.

**NEW SECTION. Sec. 7.** This act takes effect July 1, 2015.

Passed by the House March 10, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 65

[Substitute House Bill 2171]

### SERVICE MEMBERS' CIVIL RELIEF

AN ACT Relating to strengthening economic protections for veterans and military personnel; amending RCW 38.42.010, 38.42.020, and 73.16.070; adding new sections to chapter 38.42 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 38.42.010 and 2012 c 24 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Attorney general" means the attorney general of the state of Washington or any person designated by the attorney general to carry out a responsibility of the attorney general under this chapter.

(2) "Business loan" means a loan or extension of credit granted to a business entity that: (a) Is owned and operated by a service member, in which the service member is either (i) a sole proprietor, or (ii) the owner of at least fifty percent of the entity; and (b) experiences a material reduction in revenue due to the service member's military service.

~~((2))~~ (3) "Dependent" means:

(a) The service member's spouse;

(b) The service member's minor child; or

(c) An individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief under this chapter.

~~((3))~~ (4) "Financial institution" means an institution as defined in RCW 30.22.041.

~~((4))~~ (5) "Judgment" does not include temporary orders as issued by a judicial court or administrative tribunal in domestic relations cases under Title



26 RCW, including but not limited to establishment of a temporary child support obligation, creation of a temporary parenting plan, or entry of a temporary protective or restraining order.

~~((5))~~ (6) "Military service" means a service member:

(a) Under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than thirty consecutive days; or

(b) Under a call to service authorized by the governor under RCW 38.08.040 for a period of more than thirty consecutive days.

~~((6))~~ (7) "National guard" has the meaning in RCW 38.04.010.

~~((7))~~ (8) "Service member" means any resident of Washington state who is a member of the national guard or member of a military reserve component.

**Sec. 2.** RCW 38.42.020 and 2005 c 254 s 2 are each amended to read as follows:

(1) Any service member who is ordered to report for military service and his or her dependents are entitled to the rights and protections of this chapter during the period beginning on the date on which the service member receives the order and ending one hundred eighty days after termination of or release from military service.

(2) This chapter applies to any judicial or administrative proceeding commenced in any court or agency in Washington state in which a service member or his or her dependent is a ~~((defendant))~~ party. This chapter does not apply to criminal proceedings.

(3) This chapter shall be construed liberally so as to provide fairness and do substantial justice to service members and their dependents.

**NEW SECTION. Sec. 3.** A new section is added to chapter 38.42 RCW to read as follows:

(1) The federal Servicemembers Civil Relief Act of 2003, P.L. 108-189, as amended, is specifically declared to apply in proper cases in all the courts of this state.

(2) A violation of the federal Servicemembers Civil Relief Act of 2003 is a violation of this chapter.

**NEW SECTION. Sec. 4.** A new section is added to chapter 38.42 RCW to read as follows:

(1) Any person aggrieved by a violation of this chapter may in a civil action:

(a) Obtain any appropriate equitable or declaratory relief with respect to the violation; and

(b) Recover all other appropriate relief, including monetary damages.

(2) The court may award to a person aggrieved by a violation of this chapter who prevails in an action brought under subsection (1)(a) of this section the costs of the action, including reasonable attorneys' fees.

**NEW SECTION. Sec. 5.** A new section is added to chapter 38.42 RCW to read as follows:

(1) Civil proceedings to enforce this chapter may be brought by the attorney general against any person that:

(a) Engages in a pattern or practice of violating this chapter; or

(b) Engages in a violation of this chapter that raises an issue of significant public importance.

(2) In a civil action commenced under subsection (1)(a) of this section, the court may:

(a) Grant any appropriate equitable or declaratory relief with respect to the violation of this chapter;

(b) Award all other appropriate relief, including monetary damages, to any person aggrieved by the violation; and

(c) May, to vindicate the public interest, assess a civil penalty:

(i) In an amount not exceeding fifty-five thousand dollars for a first violation; and

(ii) In an amount not exceeding one hundred ten thousand dollars for any subsequent violation.

(3) Upon timely application, a person aggrieved by a violation of this chapter with respect to which the civil action is commenced may intervene in such an action and may obtain appropriate relief as the person could obtain in a civil action under section 3 of this act with respect to that violation, along with costs and reasonable attorneys' fees.

**NEW SECTION. Sec. 6.** A new section is added to chapter 38.42 RCW to read as follows:

(1) Whenever the attorney general believes that any person may: (a) Be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of this chapter, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce; or (b) have knowledge of any information that the attorney general believes relevant to the subject matter of such an investigation, he or she may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such a person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of these demands pertaining to the documentary material or information. Documents and information obtained under this section are not admissible in criminal prosecutions.

(2) Each demand must:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom the documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No demand may:

(a) Contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material that would be privileged or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of such a demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such a person is not a natural person, to any officer or managing agent of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if the person has no place of business in this state, to his or her principal office or place of business.

(5)(a) Documentary material demanded pursuant to the provisions of this section must be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section must be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section must be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section must be taken in the county within which the person resides, is found, or transacts business, or in another place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it is a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the states to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed

to, other than an authorized employee of the attorney general, without the consent of the person who produced the material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section: PROVIDED, That:

(a) Under the reasonable terms and conditions as the attorney general prescribes, the copies of the documentary material, answers to written interrogatories, or transcripts of oral testimony must be available for inspection and copying by the person who produced the material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such a person;

(b) The attorney general or any assistant attorney general may use the copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any material, answers to written interrogatories, or transcripts of oral testimony that contain trade secrets may not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing the material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in another county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court has jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender the material, the attorney general may file, in the trial court of general jurisdiction of the county in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of this section, except that if the person transacts business in more than one county the petition must be filed in the county in which the person maintains his or her principal place of business, or in another county as may be agreed upon by the parties to the petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, the court has jurisdiction to hear and determine the matter so presented and to enter such an order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

**Sec. 7.** RCW 73.16.070 and 2001 c 133 s 11 are each amended to read as follows:

The federal (~~soldiers' and sailors' civil relief act of 1940, Public Act No. 864~~) Uniformed Services Employment and Reemployment Rights Act, P.L. 103-353, as amended, is hereby specifically declared to apply in proper cases in all the courts of this state.

Passed by the House February 17, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 66

[Engrossed Senate Bill 5964]

### PUBLIC RECORDS AND MEETINGS—TRAININGS

AN ACT Relating to training public officials and employees regarding public records, records management, and open public meetings; adding a new section to chapter 42.30 RCW; adding new sections to chapter 42.56 RCW; creating new sections; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The legislature finds that the rights of citizens to observe the actions of their public officials and to have timely access to public records are the underpinnings of democracy and are essential for meaningful citizen participation in the democratic process. All too often, however, violations of the requirements of the public records act and the open public meetings act by public officials and agencies result in citizens being denied this important information and materials to which they are legally entitled. Such violations are often the result of inadvertent error or a lack of knowledge on the part of officials and agencies regarding their legal duties to the public pursuant to these acts. Also, whether due to error or ignorance, violations of the public records act and open public meetings act are very costly for state and local governments, both in terms of litigation expenses and administrative costs. The legislature also finds that the implementation of simple, cost-effective training programs will greatly increase the likelihood that public officials and agencies will better serve the public by improving citizen access to public records and encouraging public participation in governmental deliberations. Such improvements in public service will, in turn, enhance the public's trust in its government and result in significant cost savings by reducing the number of violations of the public records act and open public meetings act.

**NEW SECTION. Sec. 2.** A new section is added to chapter 42.30 RCW to read as follows:

(1) Every member of the governing body of a public agency must complete training on the requirements of this chapter no later than ninety days after the date the member either:

(a) Takes the oath of office, if the member is required to take an oath of office to assume his or her duties as a public official; or

(b) Otherwise assumes his or her duties as a public official.

(2) In addition to the training required under subsection (1) of this section, every member of the governing body of a public agency must complete training at intervals of no more than four years as long as the individual is a member of the governing body or public agency.

(3) Training may be completed remotely with technology including but not limited to internet-based training.

**NEW SECTION. Sec. 3.** A new section is added to chapter 42.56 RCW to read as follows:

(1) Each local elected official and statewide elected official, and each person appointed to fill a vacancy in a local or statewide office, must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.

(2) Officials required to complete training under this section may complete their training before assuming office but must:

(a) Complete training no later than ninety days after the date the official either:

(i) Takes the oath of office, if the official is required to take an oath of office to assume his or her duties as a public official; or

(ii) Otherwise assumes his or her duties as a public official; and

(b) Complete refresher training at intervals of no more than four years for as long as he or she holds the office.

(3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

(4) Training may be completed remotely with technology including but not limited to internet-based training.

**NEW SECTION. Sec. 4.** A new section is added to chapter 42.56 RCW to read as follows:

(1) Public records officers designated under RCW 42.56.580 and records officers designated under RCW 40.14.040 must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.

(2) Public records officers must:

(a) Complete training no later than ninety days after assuming responsibilities as a public records officer or records manager; and

(b) Complete refresher training at intervals of no more than four years as long as they maintain the designation.

(3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

(4) Training may be completed remotely with technology including but not limited to internet-based training.

**NEW SECTION. Sec. 5.** A new section is added to chapter 42.56 RCW to read as follows:

The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter.

**NEW SECTION. Sec. 6.** This act may be known and cited as the open government trainings act.

**NEW SECTION. Sec. 7.** This act takes effect July 1, 2014.

Passed by the Senate February 18, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 67

[Senate Bill 6208]

## VETERANS' BENEFIT-RELATED SERVICES

AN ACT Relating to preserving the integrity of veterans' benefit-related services; and adding a new chapter to Title 19 RCW.

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

**NEW SECTION. Sec. 1.** The legislature finds and declares that the practice of persons using the allure of untapped benefits from the United States department of veterans affairs to market products and services substantially affects the public interest. This practice may impact the ability of veterans or their surviving spouses to appropriately plan their finances or care. The legislature further finds that the lack of regulation of persons who provide advice related to veterans' benefits is inadequate to address unfair and deceptive practices that exist in the marketplace and has contributed to the unauthorized practice of law and the use and marketing of financial planning options that are potentially detrimental to the veteran, their spouse, and family. It is the intent of the legislature, through this chapter, to restrict how individuals receive compensation and remuneration for providing assistance with veterans' benefit-related services and to encourage certain disclosures from individuals offering veterans' benefit-related services.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Compensation" means money, property, or anything else of value, which includes, but is not limited to, exclusive arrangements or agreements for the provision of services or the purchase of products.

(2) "Person" includes, where applicable, natural persons, corporations, trusts, unincorporated associations, and partnerships.

(3) "Trade or commerce" includes the marketing or sale of assets, goods, or services, or any commerce directly or indirectly affecting the people of the state of Washington.

(4) "Veterans' benefit matter" means any preparation, presentation, or prosecution of a claim affecting a person who has filed or has expressed an intention to file an application for determination of payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the United States department of veterans affairs or the Washington state department of veterans affairs pertaining to veterans, dependents, and survivors.

**NEW SECTION. Sec. 3.** A person may not engage in the following acts or practices:

(1) Receiving compensation for advising or assisting another person with a veterans' benefit matter, except as permitted under Title 38 of the United States Code;

(2) Using financial or other personal information gathered in order to prepare documents for, or otherwise represent the interests of, another in a veterans' benefit matter for purposes of trade or commerce;

(3) Receiving compensation for referring another person to a person accredited by the United States department of veterans affairs;

(4) Representing, either directly or by implication, either orally or in writing, that the receipt of a certain level of veterans' benefits is guaranteed.

**NEW SECTION. Sec. 4.** (1) It is unlawful for any person to advertise or promote any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include the following disclosure: "This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the Washington State Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States or any of their auxiliaries. Products or services that may be discussed at this event are not necessarily endorsed by those organizations. You may qualify for benefits other than or in addition to the benefits discussed at this event."

(2) The disclosure required by subsection (1) of this section must be in the same type size and font as the term "veteran" or any variation of that term as used in the event advertisement or promotional materials.

(3) The disclosure required by subsection (1) of this section must be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements.

(4) The disclosure required by subsection (1) of this section does not apply where the United States department of veterans affairs, the Washington state department of veterans affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the armed forces of the United States or any of their auxiliaries have granted written permission to the advertiser or promoter for the use of its name, symbol, or insignia to advertise or promote such events, presentations, seminars, workshops, or other public gatherings. The disclosure required by subsection (1) of this section also does not apply where the event, presentation, seminar, workshop, or gathering is part of an accredited continuing legal education course.

**NEW SECTION. Sec. 5.** Nothing in this chapter applies to officers, employees, or volunteers of the state, of any county, city, or other political subdivision, or of a federal agency of the United States, who are acting in their official capacity.

**NEW SECTION. Sec. 6.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the consumer protection act, chapter 19.86 RCW.

**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 chapter may be known and cited as the "pension poacher prevention act."

**NEW SECTION. Sec. 9.** Sections 1 through 6 and 8 of this act constitute a new chapter in Title 19 RCW.



Passed by the Senate March 10, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 68

[Engrossed Second Substitute House Bill 2192]

### STATE AGENCIES—PERMITTING—MANAGEMENT SYSTEMS

AN ACT Relating to promoting economic development through enhancing transparency and predictability of state agency permitting and review processes; amending RCW 43.17.385; adding a new chapter to Title 43 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** On December 30, 2013, the Washington state auditor's office issued a performance audit report, finding that state agencies could shorten the time it takes to submit, review, and make decisions on business permit applications through simple improvements. In response to the performance audit findings, the legislature intends to improve the predictability and efficiency of permit decisions by making information about permitting assistance and timelines more readily available to the public. The legislature finds that providing citizens and businesses with better information about permit decisions will assist their planning and decision making, promoting economic development. Making permit performance data readily accessible to citizens helps them hold government accountable to a high level of customer service and timeliness. Finally, requiring agencies to track the time it takes to issue permits equips agency leaders with key information that can assist them in improving overall project schedules, better allocating resources, and identifying additional opportunities to better serve the public.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the following executive branch agencies and offices of statewide elected officials:

- (a) Department of agriculture;
  - (b) Department of archaeology and historic preservation;
  - (c) Department of ecology;
  - (d) Department of fish and wildlife;
  - (e) Gambling commission;
  - (f) Department of health;
  - (g) Department of labor and industries;
  - (h) Department of licensing;
  - (i) Liquor control board;
  - (j) Department of natural resources;
  - (k) Parks and recreation commission;
  - (l) Department of revenue;
  - (m) Department of transportation; and
  - (n) Utilities and transportation commission.
- (2) "Office" means the office of regulatory assistance.

**NEW SECTION. Sec. 3.** (1) By June 30, 2014, each agency shall prepare and submit to the office an inventory of all the business permits indicated in the December 30, 2013, performance audit report by the state auditor.

(2)(a) Each agency shall track and record the time it takes to make permitting decisions.

(b) Agencies are encouraged to track all relevant information that can assist Washington businesses in determining how long a permit process will take so that the businesses may successfully plan their activities and make sound investment choices, reduce permitting costs to the taxpayers in the form of unnecessary or duplicate staff work, and avoid permitting decision delays that can result in higher costs and lost revenue.

(c) At a minimum, each agency shall track and record the following information for each permit application it receives or decision it issues:

(i) The application completion time, which is the time elapsed from the initial submission of an application by an entity seeking a permit to the time at which the agency has determined that the application is complete; and

(ii) The permit decision time, which is the time elapsed from receipt of a complete application to the agency's issuance of a decision approving or denying the permit.

(3) Each agency shall calculate, for each permit it has identified in its inventory, the following performance data:

(a) The average application completion and permit decision times for each permit, as measured by the times tracked for ninety percent of applications or permit decisions, excluding the five percent that took the shortest and the five percent that took the longest;

(b) The maximum application completion time, excluding applications that were withdrawn or never completed; and

(c) The maximum permit decision time.

(4) Each agency shall report to the office, as provided in this subsection (4).

(a) By March 1, 2016, each agency shall report the times calculated under subsection (3) of this section for the period from January 1, 2015, to January 1, 2016.

(b) By March 1, 2018, and March 1, 2020, each agency shall report based on the times tracked and calculated since the previous reporting period.

(c) In each of the reports required under this section, each agency shall submit an updated inventory of permits. Each agency shall identify any permits listed in its inventory for which the agency has not yet posted permit processing times and other information as required under section 4 of this act and an estimated date for such posting prior to June 30, 2015.

(5) The office shall make available to the legislature, upon request, the individual agency reports submitted under subsection (4) of this section.

**NEW SECTION. Sec. 4.** (1) To provide meaningful customer service that informs project planning and decision making by the citizens and businesses served, each agency must make available to permit applicants the following information through a link from the agency's web site to the office's web site, as provided in subsection (4) of this section:

(a) A list of the types of permit assistance available and how such assistance may be accessed;

(b) An estimate of the time required by the agency to process a permit application and issue a decision;

(c) Other tools to help applicants successfully complete a thorough application, such as:

(i) Examples of model completed applications;

(ii) Examples of approved applications, appropriately redacted to remove sensitive information; and

(iii) Checklists for ensuring a complete application.

(2) Each agency shall update at reasonable intervals the information it posts pursuant to this section.

(3)(a) Agencies must post the information required under subsection (1) of this section for all permits as soon as practicable, and no later than the deadlines established in this section.

(b) The agency shall post the permit inventory for that agency and the information required under subsection (1)(a) and (c) of this section no later than June 30, 2014.

(c) The agency shall post the estimates of application completion and permit decision times required under subsection (1)(b) of this section based on actual data for calendar year 2015 by March 1, 2016, and update this information for the previous calendar year, by March 1st of each year thereafter.

(d) Agencies must consider the customer experience in ensuring all permit assistance information is simple to use, easy to access, and designed in a customer-friendly manner.

(4) To ensure agencies can post the required information online with minimal expenditure of agency resources, the office of the chief information officer shall, in consultation with the office of regulatory assistance, establish a central repository of this information, hosted on the office of regulatory assistance's web site. Each agency shall include at least one link to the central repository from the agency's web site. Agencies shall place the link or links in such locations as the agency deems will be most customer-friendly and maximize accessibility of the information to users of the web site.

(5) The office shall ensure the searchability of the information posted on the central repository, applying industry best practices such as search engine optimization, to ensure that the permit performance and assistance information is readily findable and accessible by members of the public.

**NEW SECTION. Sec. 5.** (1) By September 30th of 2016 and each even-numbered year thereafter up to and including 2020, the office shall publish a comprehensive progress report to the economic development committees of the house of representatives and the senate and to the governor on the performance of agencies in tracking permit timelines and other efforts to improve clarity and predictability of regulatory permitting. The report must include at a minimum for each agency a summary of the data reported by the agency to the office under section 3(4) of this act.

(2) The office shall post the comprehensive progress report on its web site. The report must be easily accessible and designed in a customer-friendly format.

(3) Beginning with the 2016 report, the office must identify permits with processing and decision times that are most improved and processing and decision times that are most in need of improvement, as indicated by the performance data collected under section 3 of this act. Each agency may include

a statement describing any process improvements the agency has identified for implementation in order to improve processing and decision times.

**Sec. 6.** RCW 43.17.385 and 2005 c 384 s 3 are each amended to read as follows:

(1) Each state agency shall, within available funds, develop and implement a quality management, accountability, and performance system to improve the public services it provides.

(2) Each agency shall ensure that managers and staff at all levels, including those who directly deliver services, are engaged in the system and shall provide managers and staff with the training necessary for successful implementation.

(3) Each agency shall, within available funds, ensure that its quality management, accountability, and performance system:

(a) Uses strategic business planning to establish goals, objectives, and activities consistent with the priorities of government, as provided in statute;

(b) Engages stakeholders and customers in establishing service requirements and improving service delivery systems;

(c) Includes clear, relevant, and easy-to-understand measures for each activity;

(d) Gathers, monitors, and analyzes activity data;

(e) Uses the data to evaluate the effectiveness of programs to manage process performance, improve efficiency, and reduce costs;

(f) Establishes performance goals and expectations for employees that reflect the organization's objectives; and provides for regular assessments of employee performance;

(g) Uses activity measures to report progress toward agency objectives to the agency director at least quarterly;

(h) Where performance is not meeting intended objectives, holds regular problem-solving sessions to develop and implement a plan for addressing gaps; and

(i) Allocates resources based on strategies to improve performance.

(4) Each agency shall conduct a yearly assessment of its quality management, accountability, and performance system.

(5) State agencies whose chief executives are appointed by the governor shall report to the governor on agency performance at least quarterly. The reports shall be included on the agencies', the governor's, and the office of financial management's web sites.

(6) The governor shall report annually to citizens on the performance of state agency programs. The governor's report shall include:

(a) Progress made toward the priorities of government as a result of agency activities; and

(b) Improvements in agency quality management systems, fiscal efficiency, process efficiency, asset management, personnel management, statutory and regulatory compliance, and management of technology systems.

(7) Each state agency shall integrate efforts made under this section with other management, accountability, and performance systems, including procedures implemented under chapter 43.— RCW (the new chapter created in section 7 of this act), undertaken under executive order or other authority.

**NEW SECTION. Sec. 7.** Sections 1 through 5 of this act constitute a new chapter in Title 43 RCW.

**NEW SECTION. Sec. 8.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2014, in the omnibus appropriations act, this act is null and void.

Passed by the House February 14, 2014.

Passed by the Senate March 5, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 69

[Substitute House Bill 2229]

### STATE TOURISM MARKETING PROGRAM—FUNDING

AN ACT Relating to long-term funding for a state tourism marketing program; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that after the termination of funding for the state tourism office, the Washington tourism alliance, a statewide industry organization with members from all sectors of the tourism industry, has maintained a basic state tourism marketing program. In spite of that, competition from other states and provinces has caused Washington state's percentage growth of tourism to be below the national average. Tourism is the fourth largest export industry in Washington state, employs more than one hundred fifty-three thousand individuals, and contributes significantly to state and local tax revenues. It is composed of large and small businesses from all corners of Washington state. Because of the number and diversity of businesses in the tourism industry and the desire to prevent further decline in the state's tourism industry, the legislature finds that it is in the state's best interest to identify a long-term, significant source of funding that can only be used for implementing a state tourism marketing program. The program should be supported by contributions from the primary business sectors of the state's tourism industry. The legislature also finds that a state tourism marketing program is best governed by the businesses and entities that contribute funding, including in-kind contributions.

(2) It is the intent of the legislature to enact the structure of a mechanism that will provide funding for a state tourism marketing program, including the sources of funding and governance organization which will determine the specific use and allocation of the funds. Further, it is the intent of the legislature that appropriate state agencies will work with the Washington tourism alliance to devise a plan to collect funds necessary for a state tourism marketing program and ensure that the funds are used only for that purpose.

**NEW SECTION. Sec. 2.** (1) The Washington tourism alliance has determined that a reasonable amount to initially implement a state tourism marketing program is seven million five hundred thousand dollars. It is intended for this amount to be raised from five major sectors of the tourism industry. These sectors are lodging, food service, attractions and entertainment, retail, and transportation. Based on the North American classification system codes that

make up each sector, it is intended for these sectors to contribute the following amounts in a manner to be described in the report required under subsection (2) of this section:

- (a) Lodging - two million four hundred thousand dollars;
- (b) Food service - two million one hundred thousand dollars;
- (c) Attractions and entertainment - nine hundred seventy-five thousand dollars;
- (d) Retail - one million four hundred twenty-five thousand dollars; and
- (e) Transportation - six hundred thousand dollars.

(2) By December 1, 2014, a report must be submitted to the appropriate legislative committees from the Washington tourism alliance proposing the manner in which the amounts allocated to each sector will be collected and the mechanism that can be used to ensure that the funds are used only by the Washington tourism alliance for a state tourism marketing program including its administration. The legislature must direct the appropriate agencies of state government to work with the Washington tourism alliance to assist in developing the collection method. These agencies include but are not limited to the department of revenue, department of commerce, the state treasurer's office, and the secretary of state.

(3) In addition to the five sectors in subsection (1) of this section, the Washington tourism alliance must identify and include in the report other tourism sectors, businesses, and government entities which are part of the tourism industry and could provide additional funding for a state marketing program.

**NEW SECTION. Sec. 3.** (1) As part of the report to the legislature required under section 2(2) of this act, the Washington tourism alliance must include a proposal for a governance structure which will determine the use of the funds, including a method to report on the effectiveness of the state tourism marketing plan. The report must also include a method for stopping the collection of funds from the sectors noted in section 2(1) of this act if the board determines that the funds are not being used in an appropriate manner.

(2) The governance structure must include a board with a majority of representatives from the five sectors noted in section 2(1) of this act. Representatives from destination marketing organizations must also be included on the board. The board members must be chosen to ensure broad geographic representation and diversity in the size of businesses. Other representatives may be chosen from businesses and entities that voluntarily make a significant contribution to state tourism marketing funding. All board members must represent the interests of the entire state.

(3) Initial board appointments must be made by the current Washington tourism alliance board. Statewide trade associations that represent any of the sectors noted in section 2(1) of this act must submit nominations from their sector for the board. The nominations must reflect the size and geographic diversity of the sector represented by the trade association and must be at least twice the number of positions to be filled by the nominations. Initial and subsequent board appointments must be made from these nominations.

(4) The governance structure must include a proposal for a marketing committee and an executive committee. The marketing committee may include representatives from the tourism industry who are not members of the board.

Passed by the House February 17, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 70

[Substitute House Bill 2310]

### MEDICAID—INDIVIDUAL PROVIDERS—SAFETY EQUIPMENT

AN ACT Relating to safety equipment for individual providers; and adding a new section to chapter 74.39A RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 74.39A RCW to read as follows:

(1) The legislature finds and declares that universal precautions are important health and safety protections for home care clients and workers who provide direct care for those clients. The use of personal protective equipment such as gloves is an established component of universal precautions and a key tool to protect against exposure to bloodborne pathogens such as hepatitis B virus, hepatitis C virus, and human immunodeficiency virus. Most medicaid clients are eligible to receive gloves through their medicaid benefit, yet the majority of clients are not aware of or do not use this benefit and as a result do not have gloves available in the home for individual providers to use. The legislature intends to improve the availability and usage of gloves by individual providers as part of universal precautions by ensuring that medicaid clients access gloves through their medicaid benefit.

(2) For medicaid clients, the department shall coordinate with the health care authority to assist clients receiving personal care services in accessing gloves as part of their health benefit for individual providers to use in the course of providing tasks where universal precautions are warranted. The assistance by the department and the health care authority must be designed to facilitate clients being able to access gloves on a monthly basis in a cost-effective and easy to access manner and must be consistent with requirements to receive federal matching funds under medicaid.

(3) In cases where clients are not eligible to receive such gloves under medicaid, the department shall work with the health care authority to develop a methodology to ensure clients have access to gloves on a monthly basis in a cost-effective and easy to access manner.

(4) The department shall submit a brief report with data on utilization of gloves by clients who are served by individual providers to the health care committees of the legislature by December 1, 2015.

Passed by the House February 13, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 71

[Engrossed Substitute House Bill 2315]

## SUICIDE PREVENTION

AN ACT Relating to suicide prevention; amending 2012 c 181 s 1 (uncodified); reenacting and amending RCW 43.70.442; adding new sections to chapter 43.70 RCW; creating a new section; and providing an expiration date.

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

**Sec. 1.** 2012 c 181 s 1 (uncodified) is amended to read as follows:

(1) The legislature finds that:

(a) According to the centers for disease control and prevention:

(i) In 2008, more than thirty-six thousand people died by suicide in the United States, making it the tenth leading cause of death nationally.

(ii) During 2007-2008, an estimated five hundred sixty-nine thousand people visited hospital emergency departments with self-inflicted injuries in the United States, seventy percent of whom had attempted suicide.

(iii) During 2008-2009, the average percentages of adults who thought, planned, or attempted suicide in Washington were higher than the national average.

(b) According to a national study, veterans face an elevated risk of suicide as compared to the general population, more than twice the risk among male veterans. Another study has indicated a positive correlation between posttraumatic stress disorder and suicide.

(i) Washington state is home to more than sixty thousand men and women who have deployed in support of the wars in Iraq and Afghanistan.

(ii) Research continues on how the effects of wartime service and injuries, such as traumatic brain injury, posttraumatic stress disorder, or other service-related conditions, may increase the number of veterans who attempt suicide.

(iii) As more men and women separate from the military and transition back into civilian life, community mental health providers will become a vital resource to help these veterans and their families deal with issues that may arise.

(c) Suicide has an enormous impact on the family and friends of the victim as well as the community as a whole.

(d) Approximately ninety percent of people who die by suicide had a diagnosable psychiatric disorder at the time of death, such as depression. Most suicide victims exhibit warning signs or behaviors prior to an attempt.

(e) Improved training and education in suicide assessment, treatment, and management has been recommended by a variety of organizations, including the United States department of health and human services and the institute of medicine.

(2) It is therefore the intent of the legislature to help lower the suicide rate in Washington by requiring certain health professionals to complete training in suicide assessment, treatment, and management as part of their continuing education, continuing competency, or recertification requirements.

(3) The legislature does not intend to expand or limit the existing scope of practice of any health professional affected by this act.

**Sec. 2.** RCW 43.70.442 and 2013 c 78 s 1 and 2013 c 73 s 6 are each reenacted and amended to read as follows:



(1)(a) (~~Beginning January 1, 2014,~~) Each of the following professionals certified or licensed under Title 18 RCW shall, at least once every six years, complete training in suicide assessment, treatment, and management that is approved, in rule, by the relevant disciplining authority:

- (i) An adviser or counselor certified under chapter 18.19 RCW;
- (ii) A chemical dependency professional licensed under chapter 18.205 RCW;
- (iii) A marriage and family therapist licensed under chapter 18.225 RCW;
- (iv) A mental health counselor licensed under chapter 18.225 RCW;
- (v) An occupational therapy practitioner licensed under chapter 18.59 RCW;
- (vi) A psychologist licensed under chapter 18.83 RCW;
- (vii) An advanced social worker or independent clinical social worker licensed under chapter 18.225 RCW; and
- (viii) A social worker associate—advanced or social worker associate—independent clinical licensed under chapter 18.225 RCW.

(b) The requirements in (a) of this subsection apply to a person holding a retired active license for one of the professions in (a) of this subsection.

(c) The training required by this subsection must be at least six hours in length, unless a ~~((disciplinatory))~~ disciplining authority has determined, under subsection ~~((§))~~ (9)(b) of this section, that training that includes only screening and referral elements is appropriate for the profession in question, in which case the training must be at least three hours in length.

(2)(a) Except as provided in (b) of this subsection, a professional listed in subsection (1)(a) of this section must complete the first training required by this section during the first full continuing education reporting period after January 1, 2014, or the first full continuing education reporting period after initial licensure or certification, whichever occurs later.

(b) A professional listed in subsection (1)(a) of this section applying for initial licensure (~~(on or after January 1, 2014,))~~ may delay completion of the first training required by this section for six years after initial licensure if he or she can demonstrate successful completion of the training required in subsection (1) of this section no more than six years prior to the application for initial licensure.

(3) The hours spent completing training in suicide assessment, treatment, and management under this section count toward meeting any applicable continuing education or continuing competency requirements for each profession.

(4)(a) A disciplining authority may, by rule, specify minimum training and experience that is sufficient to exempt a professional from the training requirements in subsections (1) and (5) of this section.

(b) (~~(The board of occupational therapy practice))~~ A disciplining authority may exempt ((an occupational therapy practitioner)) a professional from the training requirements of subsections (1) and (5) of this section if the ((occupational therapy practitioner)) professional has only brief or limited patient contact.

(5)(a) Each of the following professionals credentialed under Title 18 RCW shall complete a one-time training in suicide assessment, treatment, and management that is approved by the relevant disciplining authority:

- (i) A chiropractor licensed under chapter 18.25 RCW;

(ii) A naturopath licensed under chapter 18.36A RCW;

(iii) A licensed practical nurse, registered nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW;

(iv) An osteopathic physician and surgeon licensed under chapter 18.57 RCW;

(v) An osteopathic physician assistant licensed under chapter 18.57A RCW;

(vi) A physical therapist or physical therapist assistant licensed under chapter 18.74 RCW;

(vii) A physician licensed under chapter 18.71 RCW;

(viii) A physician assistant licensed under chapter 18.71A RCW; and

(ix) A person holding a retired active license for one of the professions listed in (a)(i) through (viii) of this subsection.

(b) A professional listed in (a) of this subsection must complete the one-time training during the first full continuing education reporting period after the effective date of this section or the first full continuing education reporting period after initial licensure, whichever is later.

(c) The training required by this subsection must be at least six hours in length, unless a disciplining authority has determined, under subsection (9)(b) of this section, that training that includes only screening and referral elements is appropriate for the profession in question, in which case the training must be at least three hours in length.

~~(6)~~(a) The secretary and the disciplining authorities shall work collaboratively to develop a model list of training programs in suicide assessment, treatment, and management.

(b) When developing the model list, the secretary and the disciplining authorities shall:

(i) Consider suicide assessment, treatment, and management training programs of at least six hours in length listed on the best practices registry of the American foundation for suicide prevention and the suicide prevention resource center; and

(ii) Consult with public and private institutions of higher education, experts in suicide assessment, treatment, and management, and affected professional associations.

(c) The secretary and the disciplining authorities shall report the model list of training programs to the appropriate committees of the legislature no later than December 15, 2013.

~~((6))~~ (d) The secretary and the disciplining authorities shall update the list at least once every two years. When updating the list, the secretary and the disciplining authorities shall, to the extent practicable, endeavor to include training on the model list that includes content specific to veterans. When identifying veteran-specific content under this subsection, the secretary and the disciplining authorities shall consult with the Washington department of veterans affairs.

~~(7)~~ Nothing in this section may be interpreted to expand or limit the scope of practice of any profession regulated under chapter 18.130 RCW.

~~((7))~~ (8) The secretary and the disciplining authorities affected by this section shall adopt any rules necessary to implement this section.

~~((8))~~ (9) For purposes of this section:

(a) "Disciplining authority" has the same meaning as in RCW 18.130.020.

(b) "Training in suicide assessment, treatment, and management" means empirically supported training approved by the appropriate disciplining authority that contains the following elements: Suicide assessment, including screening and referral, suicide treatment, and suicide management. However, the disciplining authority may approve training that includes only screening and referral elements if appropriate for the profession in question based on the profession's scope of practice. The board of occupational therapy may also approve training that includes only screening and referral elements if appropriate for occupational therapy practitioners based on practice setting.

~~((9))~~ (10) A state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

~~((10))~~ (11) An employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

**NEW SECTION. Sec. 3.** (1) The department of social and health services and the health care authority shall jointly develop a plan for a pilot program to support primary care providers in the assessment and provision of appropriate diagnosis and treatment of individuals with mental or other behavioral health disorders and track outcomes of the program.

(2) The program must, at a minimum, include the following:

(a) Two pilot sites, one in an urban setting and one in a rural setting; and  
 (b) Timely case consultation between primary care providers and psychiatric specialists.

(3) The plan must address timely access to care coordination and appropriate treatment services, including next day appointments for urgent cases.

(4) The plan must include:

(a) A description of the recommended program design, staffing model, and projected utilization rates for the two pilot sites and for statewide implementation; and

(b) Detailed fiscal estimates for the pilot sites and for statewide implementation, including:

(i) A detailed cost breakdown of the elements in subsections (2) and (3) of this section, including the proportion of anticipated federal and state funding for each element; and

(ii) An identification of which elements and costs would need to be funded through new resources and which can be financed through existing funded programs.

(5) When developing the plan, the department and the authority shall consult with experts and stakeholders, including, but not limited to, primary care providers, experts on psychiatric interventions, institutions of higher education,

tribal governments, the state department of veterans affairs, and the partnership access.

(6) The department and the authority shall provide the plan to the appropriate committees of the legislature no later than November 15, 2014.

**NEW SECTION. Sec. 4.** A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary, in consultation with the steering committee convened in subsection (3) of this section, shall develop a Washington plan for suicide prevention. The plan must, at a minimum:

(a) Examine data relating to suicide in order to identify patterns and key demographic factors;

(b) Identify key risk and protective factors relating to suicide; and

(c) Identify goals, action areas, and implementation strategies relating to suicide prevention.

(2) When developing the plan, the secretary shall consider national research and practices employed by the federal government, tribal governments, and other states, including the national strategy for suicide prevention. The plan must be written in a manner that is accessible, and useful to, a broad audience. The secretary shall periodically update the plan as needed.

(3) The secretary shall convene a steering committee to advise him or her in the development of the Washington plan for suicide prevention. The committee must consist of representatives from the following:

(a) Experts on suicide assessment, treatment, and management;

(b) Institutions of higher education;

(c) Tribal governments;

(d) The department of social and health services;

(e) The state department of veterans affairs;

(f) Suicide prevention advocates, at least one of whom must be a suicide survivor and at least one of whom must be a survivor of a suicide attempt;

(g) Primary care providers;

(h) Local health departments or districts; and

(i) Any other organizations or groups the secretary deems appropriate.

(4) The secretary shall complete the plan no later than November 15, 2015, publish the report on the department's web site, and submit copies to the governor and the relevant standing committees of the legislature.

**NEW SECTION. Sec. 5.** A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary shall update the report required by section 3, chapter 181, Laws of 2012 in 2018 and again in 2022 and report the results to the governor and the appropriate committees of the legislature by November 15, 2018, and November 15, 2022.

(2) This section expires December 31, 2022.

Passed by the House March 10, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 72

[House Bill 2359]

## COLLECTIBLE VEHICLES—EMISSION TESTS—EXEMPTION

AN ACT Relating to exempting collectible vehicles from emission test requirements; amending RCW 46.16A.060; and adding a new section to chapter 46.04 RCW.

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

**Sec. 1.** RCW 46.16A.060 and 2011 c 114 s 6 are each amended to read as follows:

(1) The department, county auditor or other agent, or subagent appointed by the director may not issue or renew a motor vehicle registration or change the registered owner of a registered vehicle for any motor vehicle required to be inspected under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued as required under chapter 70.120 RCW; or (b) exempt, as described in subsection (2) of this section. The certificates must have a date of validation that is within twelve months of the assigned registration renewal date. Certificates for fleet or owner tested diesel vehicles may have a date of validation that is within twelve months of the assigned registration renewal date.

(2) The following motor vehicles are exempt from emission test requirements:

(a) Motor vehicles that are less than five years old or more than twenty-five years old;

(b) Motor vehicles that are a 2009 model year or newer;

(c) Motor vehicles powered exclusively by electricity, propane, compressed natural gas, or liquid petroleum gas;

(d) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(e) Farm vehicles as defined in RCW 46.04.181;

(f) Street rod vehicles as defined in RCW 46.04.572 and custom vehicles as defined in RCW 46.04.161;

(g) Used vehicles that are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW;

(h) Classes of motor vehicles exempted by the director of the department of ecology; ~~(and)~~

(i) Hybrid motor vehicles that obtain a rating by the environmental protection agency of at least fifty miles per gallon of gas during city driving. For purposes of this section, a hybrid motor vehicle is one that uses propulsion units powered by both electricity and gas; and

(j) Collectible vehicles as defined in section 2 of this act.

(3) The department of ecology shall provide information to motor vehicle owners:

(a) Regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such areas; and

(b) On the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution.

(4) The department of licensing shall:

(a) Notify all registered motor vehicle owners affected by the emission testing program that they must have an emission test to renew their registration;

(b) Adopt rules implementing and enforcing this section, except for subsection (2)(e) of this section, as specified in chapter 34.05 RCW.

(5) A motor vehicle may not be registered, leased, rented, or sold for use in the state, starting with the model year as provided in RCW 70.120A.010, unless the vehicle:

(a) Has seven thousand five hundred miles or more; or

(b)(i) Is consistent with the vehicle emission standards and carbon dioxide equivalent emission standards adopted by the department of ecology; and

(ii) Has a California certification label for all emission standards, and carbon dioxide equivalent emission standards necessary to meet fleet average requirements.

(6) The department of licensing, in consultation with the department of ecology, may adopt rules necessary to implement this section and may provide for reasonable exemptions to these requirements. The department of ecology may exempt public safety vehicles from meeting the standards where the department finds that vehicles necessary to meet the needs of public safety agencies are not otherwise reasonably available.

**NEW SECTION. Sec. 2.** A new section is added to chapter 46.04 RCW to read as follows:

"Collectible vehicle" means a vehicle that complies with the following:

(1) Is of unique or rare design, of limited production, and an object of curiosity;

(2) Is maintained primarily for use in car club activities, exhibitions, parades, or other functions of public interest or for a private collection, and is used only infrequently for other purposes; and

(3) Has collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

Passed by the House February 14, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 73

[Substitute House Bill 2454]

### WATER QUALITY TRADING PROGRAM

AN ACT Relating to developing a water quality trading program in Washington; adding a new section to chapter 89.08 RCW; 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 legislature finds that water quality trading is an innovative approach adopted in at least seventeen other states that can lead to a more efficient achievement of water quality goals. The premise of water quality trading is based on the fact that certain sources in a given watershed can have very different costs to control the same pollutant. Trading programs allow facilities facing higher pollution control costs to meet their regulatory

obligations by purchasing environmentally equivalent or superior pollution reductions from another source at a lower cost. This trading achieves the same water quality improvement at lower overall cost.

(2) The legislature further finds that the United States environmental protection agency has been supportive of water quality trading programs since 1993 when it issued an initial document called the National Water Quality Trading Policy. With this publication, the environmental protection agency sent a clear signal of federal support for this innovative, market-based approach to improving water quality.

(3) The legislature further finds that water quality trading is, and should remain, a voluntary option that regulated point sources can use to meet the discharge limits in their national pollutant discharge elimination system permits.

(4) The legislature recognizes that setting up a water quality trading program can be a complex task that needs to be transparent, must have real, accountable deductions in pollution inputs, must be defensible, and must be enforceable. A water quality trading program may not be suitable for many watersheds in the state. However, the legislature also finds that the state of Washington should explore the option as a tool for achieving water quality goals and investigate whether this tool is viable given the specific, local water quality concerns facing Washington's water bodies.

(5) The legislature further recognizes that the department of ecology has produced a draft water quality trading framework that enables trading in Washington and that to date a major barrier to trading is a lack of interested credit purchasers.

**NEW SECTION, Sec. 2.** A new section is added to chapter 89.08 RCW to read as follows:

(1) The state conservation commission, in partnership with the department of ecology, shall build upon the report on conservation markets produced pursuant to chapter 133, Laws of 2008 and explore whether there are potential buyers and sellers in Washington watersheds for a water quality trading program. Specifically, the state conservation commission should examine watersheds in which total maximum daily loads have been produced, and assess whether there are potential buyers, or permit holders, and sellers of credit to support a water quality trading program consistent with the water quality trading framework developed by the department of ecology.

(2) The state conservation commission must coordinate with Indian tribes, the department of agriculture and other state agencies, local governments, and other interested stakeholders in completing the assessment and report required by this section. Prior to finalizing the assessment and report, the state conservation commission must ensure that the department of ecology concurs with its determination of whether or not there is the potential for a viable water quality trading program.

(3) The state conservation commission must report its findings to the legislature consistent with RCW 43.01.036 by October 31, 2017.

(4) This section expires June 30, 2018.

Passed by the House February 17, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 74

[Engrossed Second Substitute House Bill 2569]

### DIESEL EMISSIONS—AIR POLLUTION REDUCTION

AN ACT Relating to reducing air pollution associated with diesel emissions; reenacting and amending RCW 43.84.092 and 43.84.092; adding a new chapter to Title 70 RCW; providing a contingent effective date; and providing a contingent expiration date.

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

**NEW SECTION. Sec. 1.** The legislature finds that investments in diesel engine idling reduction projects cost-effectively improve public health by reducing harmful diesel emissions. The legislature further finds that these investments also result in long-term savings in fuel and maintenance costs. It is therefore the intent of the legislature to establish a stable, wholly self-sustaining account for the department of ecology to use for investments in diesel idle reduction projects.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means the diesel idle reduction account created in section 4 of this act.

(2) "Department" means the department of ecology.

(3) "Loan recipient" means a state, local, or other governmental entity that owns diesel vehicles or equipment.

**NEW SECTION. Sec. 3.** (1) The department shall use the moneys in the account to provide loans with low or no interest to loan recipients for the purpose of reducing exposure to diesel emissions and improving public health by investing in diesel idle emission reduction technologies and infrastructure. The department shall, to the extent practical, integrate communications, outreach, and other aspects of the administration of loans from the account with the administration of existing grant programs to reduce diesel emissions from vehicles and equipment. In selecting loan recipients, the department shall consider anticipated human health, environmental, and greenhouse gas benefits from reduced exposure to harmful air emissions associated with diesel idling.

(2) The department shall make loans in such a manner that the remittances from loan recipients are of equal value over a long-term planning horizon to the disbursements from the fund.

(3) Loan moneys may not be spent on vehicles or equipment that spend less than one-half of their operating time in Washington. Permissible diesel idle reduction expenditures include, but are not limited to:

(a) Electrified parking spaces and truck stops;

(b) Shore connection systems and alternative maritime power;

(c) Shore connection systems for locomotives;

(d) Auxiliary power units and generator sets;

(e) Fuel-operated heaters or direct-fired heaters, including engine fluid preheaters and cab air heaters;



- (f) Battery powered systems, including battery powered heating and air conditioning systems;
- (g) Thermal storage systems;
- (h) Automatic engine start-up and shutdown systems;
- (i) Projects to augment or replace diesel engines or power systems with engines or power systems that use liquefied or compressed natural gas; and
- (j) Other operation or maintenance efficiencies that achieve emission reduction benefits for the public.

**NEW SECTION. Sec. 4.** The diesel idle reduction account is created in the state treasury. All receipts from remittances made by loan recipients pursuant to section 3 of this act and any moneys appropriated to the account by law must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this chapter, including the costs of program administration.

**Sec. 5.** RCW 43.84.092 and 2013 2nd sp.s. c 23 s 24 and 2013 2nd sp.s. c 11 s 15 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury 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) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar

River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife

account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 6.** RCW 43.84.092 and 2013 2nd sp.s. c 23 s 25 and 2013 2nd sp.s. c 11 s 16 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management

improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury 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) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial

retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation

taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**NEW SECTION. Sec. 7.** The department may adopt rules necessary to implement this chapter only after the legislature appropriates moneys to the account created in section 4 of this act.

**NEW SECTION. Sec. 8.** Sections 1 through 4 and 7 of this act constitute a new chapter in Title 70 RCW.

**NEW SECTION. Sec. 9.** Section 5 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

**NEW SECTION. Sec. 10.** Section 6 of this act takes effect on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

Passed by the House March 10, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 75

[House Bill 2585]

### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES—BENEFITS FOR CHILD

AN ACT Relating to income eligibility for temporary assistance for needy families benefits for a child; and amending RCW 74.12.037.

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

**Sec. 1.** RCW 74.12.037 and 2011 1st sp.s. c 42 s 4 are each amended to read as follows:

(1) The department shall adopt rules(~~(, effective November 1, 2011,)~~) establishing income eligibility for temporary assistance for needy families benefits for a child, other than a foster child, who lives with a caregiver other than his or her parents. The department shall establish a sliding scale benefit standard for a child when the income of the child's caregiver is above two hundred percent but below three hundred percent of the federal poverty level based on family size. A caregiver with an income above three hundred percent of the federal poverty level shall not be eligible for temporary assistance for needy families benefits for a child, not a foster child, who is residing with that caregiver.

(2)(a) For purposes of this section, the department may, by rule, exempt fifty percent of a caregiver's unearned income in determining eligibility and benefit standards. This is in addition to other exemptions authorized by law.

(b) For purposes of this subsection, "unearned income" means income received from a source other than employment or self-employment.

Passed by the House February 17, 2014.

Passed by the Senate March 13, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 76

[Engrossed House Bill 2636]

### DEPARTMENT OF ECOLOGY—REPORT STREAMLINING

AN ACT Relating to streamlining statutorily required environmental reports by government entities; amending RCW 70.93.200, 70.93.220, 70.93.250, 70.94.162, 70.95.530, 70.95J.025, 70.120A.050, 90.42.130, 90.44.052, 90.48.545, 90.80.150, and 90.82.043; reenacting and amending RCW 43.21A.667; and repealing RCW 70.95.545, 70.120A.040, and 90.80.901.

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

**Sec. 1.** RCW 43.21A.667 and 2011 c 171 s 7, 2011 c 169 s 2, and 2011 c 5 s 908 are each reenacted and amended to read as follows:

(1) The aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic algae control account may be appropriated to the department to develop a freshwater and saltwater aquatic algae control program and may be used to establish contingency funds for emergent issues. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies: (i) To manage excessive freshwater and saltwater nuisance algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and (ii) for freshwater and saltwater nuisance algae monitoring and removal; and

(b) To provide technical assistance to applicants and the public about aquatic algae control(~~;~~ and

~~(c) During the 2009-2011 fiscal biennium, the legislature may transfer from the freshwater aquatic algae control account to the state general fund such amounts as reflect the excess fund balance of the account).~~

~~(3) ((The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007.~~

~~(4))~~ For the purposes of this section, "saltwater nuisance algae" means native invasive algae (sea lettuce), nonnative invasive algae, and algae producing harmful toxins.

**Sec. 2.** RCW 70.93.200 and 1998 c 257 s 8 are each amended to read as follows:

In addition to the foregoing, the department of ecology shall:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the waste reduction, anti-litter, and recycling efforts;

(2) Serve as the coordinating and administrating agency for all state agencies and local governments receiving funds for waste reduction, litter control, and recycling under this chapter;

(3) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(4) Cooperate with all local governments to accomplish coordination of local waste reduction, anti-litter, and recycling efforts;

(5) Encourage, organize, and coordinate all voluntary local waste reduction, anti-litter, and recycling campaigns seeking to focus the attention of the public on the programs of this state to reduce waste, control and remove litter, and foster recycling;

(6) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

(7) Develop statewide programs by working with local governments, payers of the waste reduction, recycling, and litter control tax, and industry organizations that are active in waste reduction, anti-litter, and recycling efforts to increase public awareness of and participation in recycling and to stimulate and encourage local private recycling centers, public participation in recycling and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials;

(8) Conduct a ~~((biennial))~~ periodic statewide litter survey targeted at litter composition, sources, demographics, and geographic trends; and

(9) Provide on the department's web site a ~~((biennial))~~ summary of all waste reduction, litter control, and recycling efforts statewide including those of the department ~~((of ecology))~~ and other state agencies and local governments funded for such programs under this chapter. ~~((This report is due to the legislature in March of even-numbered years.))~~

**Sec. 3.** RCW 70.93.220 and 1998 c 257 s 6 are each amended to read as follows:

(1) The department ~~((of ecology))~~ is the coordinating and administrative agency working with the departments of natural resources, revenue, transportation, and corrections, and the parks and recreation commission in developing a biennial budget request for funds for the various agencies' litter collection programs.

(2) Funds may be used to meet the needs of efficient and effective litter collection and illegal dumping programs identified by the various agencies. The department shall develop criteria for evaluating the effectiveness and efficiency of the waste reduction, litter control, and recycling programs being administered by the various agencies listed in RCW 70.93.180, and shall distribute funds according to the effectiveness and efficiency of those programs. In addition, the department shall approve funding requests for efficient and effective waste reduction, litter control, and recycling programs, provide funds, and monitor the results of all agency programs.

(3) All agencies are responsible for reporting information on their litter collection programs(;) as requested by the department ~~((of ecology. Beginning~~



~~in the year 2000, this information shall be provided to the department by March of even-numbered years. In 1998, this information shall be provided by July 1st.~~

~~(4) By December 1998, and in every even-numbered year thereafter, the department shall provide a report to the legislature summarizing biennial waste reduction, litter control, and recycling activities by state agencies and submitting the coordinated litter budget request of all agencies).~~

**Sec. 4.** RCW 70.93.250 and 2002 c 175 s 46 are each amended to read as follows:

(1) The department shall provide funding to local units of government to establish, conduct, and evaluate community restitution and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department shall evaluate funding requests from local government according to the same criteria as those developed in RCW 70.93.220, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government. ~~((The department shall report to the appropriate standing committees of the legislature by December of even-numbered years on the effectiveness of local government waste reduction, litter, and recycling programs funded under this section.))~~

**Sec. 5.** RCW 70.94.162 and 1998 c 245 s 129 are each amended to read as follows:

(1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. However, a source that receives its operating permit from the United States environmental protection agency shall not be considered a permit program source so long as the environmental protection agency continues to act as the permitting authority for that source. Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program, and may, by rule, establish a payment schedule whereby periodic installments of the annual fee are due and payable more frequently. All operating permit program fees collected by the department shall be deposited in the air operating permit account. All operating permit program fees collected by the delegated local air authorities shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program. The fees assessed under this subsection shall first

be due not less than forty-five days after the United States environmental protection agency delegates to the department the authority to administer the operating permit program and then annually thereafter.

The department shall establish, by rule, procedures for administrative appeals to the department regarding the fee assessed pursuant to this subsection.

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of statewide program development and oversight costs.

(a) Permit administration costs are those incurred by each permitting authority, including the department, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program and to the sources permitted by a permitting authority, including, where applicable, sources subject to a general permit:

(i) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(ii) Source inspections, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(iii) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(iv) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(v) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(vi) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(vii) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(viii) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(ix) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(x) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(xi) Training for permit administration and enforcement;

(xii) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(xiii) Required fiscal audits, periodic performance audits, and reporting activities;

(xiv) Tracking of time, revenues and expenditures, and accounting activities;

(xv) Administering the permit program including the costs of clerical support, supervision, and management;

(xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and

(xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:

(i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(vii) State codification of federal rules or standards for inclusion in operating permits;

(viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;

(ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(x) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(xi) Tracking of time, revenues and expenditures, and accounting activities;

(xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(xv) The share attributable to permitted sources of modeling activities;

(xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule;

(xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:

(a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.

(b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

(c) The department shall allocate its development and oversight costs among all permitting authorities, including the department, in proportion to the number of permit program sources under the jurisdiction of each authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed that authority. For purposes of this subsection, all sources covered by a single general permit shall be treated as one source.

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

(5) The fee schedule developed by the department shall allocate among the sources for whom the department acts as a permitting authority, other than sources subject to a general permit, those portions of the department's permit administration costs and the department's share of the development and

oversight costs which the department does not plan to recover under its general permit fee schedule or schedules as follows:

(a) The department shall allocate its permit administration costs and its share of the development and oversight costs not recovered through general permit fees according to a three-tiered model based upon:

(i) The number of permit program sources under its jurisdiction;

(ii) The complexity of permit program sources under its jurisdiction; and

(iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

(b) Each of the three tiers shall be equally weighted.

(c) The department may, in addition, allocate activities-based costs readily attributable to a specific source to that source under RCW 70.94.152(1) and 70.94.154(7).

The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions during the most recent calendar year for which data is available.

(6) The department shall, after opportunity for public review and comment, adopt rules that establish a process for development and review of its operating permit program fee schedule, a methodology for tracking program revenues and expenditures, and, for both the department and the delegated local air authorities, a system of fiscal audits, reports, and periodic performance audits.

(a) The fee schedule development and review process shall include the following:

(i) The department shall conduct a biennial workload analysis. The department shall provide the opportunity for public review of and comment on the workload analysis. The department shall review and update its workload analysis during each biennial budget cycle, taking into account information gathered by tracking previous revenues, time, and expenditures and other information obtained through fiscal audits and performance audits.

(ii) The department shall prepare a biennial budget based upon the resource requirements identified in the workload analysis for that biennium. In preparing the budget, the department shall take into account the projected operating permit account balance at the start of the biennium. The department shall provide the opportunity for public review of and comment on the proposed budget. The department shall review and update its budget each biennium.

(iii) The department shall develop a fee schedule allocating the department's permit administration costs and its share of the development and oversight costs among the department's permit program sources using the methodology described in subsection (5) of this section. The department shall provide the opportunity for public review of and comment on the allocation methodology and fee schedule. The department shall provide procedures for administrative resolution of disputes regarding the source data on which allocation determinations are based; these procedures shall be designed such that resolution occurs prior to the completion of the allocation process. The department shall review and update its fee schedule annually.

(b) The methodology for tracking revenues and expenditures shall include the following:

(i) The department shall develop a system for tracking revenues and expenditures that provides the maximum practicable information. At a

minimum, revenues from fees collected under the operating permit program shall be tracked on a source-specific basis and time and expenditures required to administer the program shall be tracked on the basis of source categories and functional categories. Each general permit will be treated as a separate source category for tracking and accounting purposes.

(ii) The department shall use the information obtained from tracking revenues, time, and expenditures to modify the workload analysis required in subsection (6)(a) of this section.

(iii) The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(c) The system of fiscal audits, reports, and periodic performance audits shall include the following:

(i) The department and the delegated local air authorities shall ~~((prepare annual reports and shall submit the reports to, respectively, the appropriate standing committees of the legislature and the board of directors of the local air authority))~~ periodically report information about the air operating permit program on the department's web site.

(ii) The department shall arrange for fiscal audits and routine performance audits and for periodic intensive performance audits of each permitting authority and of the department.

(7) Each local air authority requesting delegation shall, after opportunity for public review and comment, publish regulations which establish a process for development and review of its operating permit program fee schedule, and a methodology for tracking its revenues and expenditures. These regulations shall be submitted to the department for review and approval as part of the local authority's delegation request.

(8) As used in this section and in RCW 70.94.161(14), "regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule.

(9) Fee structures as authorized under this section shall remain in effect until such time as the legislature authorizes an alternative structure following receipt of the report required by this subsection.

**Sec. 6.** RCW 70.95.530 and 2009 c 261 s 5 are each amended to read as follows:

(1) Moneys in the waste tire removal account may be appropriated to the department of ecology:

(a) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites; and

(b) To accomplish the other purposes of RCW 70.95.020 as they relate to waste tire cleanup under this chapter.

(2) In spending funds in the account under this section, the department ~~((of ecology))~~ shall identify communities with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires.

(3) ~~((On September 1st of even-numbered years,))~~ The department ((of ecology)) shall provide ((a report to the house [of representatives] and senate transportation committees on the progress being made on the cleanup of

~~unauthorized waste tire piles in the state and efforts underway to prevent the formation of future unauthorized waste tire piles. The report must detail any additional unauthorized waste tire piles discovered since the last report and present a plan to clean up these new unauthorized waste tire piles if they have not already done so, as well as include a listing of authorized waste tire piles and transporters. The report must also include the status of funds available to the program and a needs assessment of the program. On September 1, 2010, the department shall also make recommendations to the committees for an ongoing program to prevent the formation of future unauthorized waste tire piles. Such a program, if required, must include joint efforts with local governments and the tire industry)) on its web site a summary of state and local government efforts funded using the waste tire removal account, a list of authorized waste tire storage sites and transporters, and tire recycling and reuse rates in the state for each calendar year.~~

**Sec. 7.** RCW 70.95J.025 and 1997 c 398 s 1 are each amended to read as follows:

(1) The department shall establish annual fees to collect expenses for issuing and administering biosolids permits under this chapter. An initial fee schedule shall be established by rule and shall be adjusted no more often than once every two years. This fee schedule applies to all permits, regardless of date of issuance, and fees shall be assessed prospectively. Fees shall be established in amounts to recover expenses incurred by the department in processing permit applications and modifications, reviewing related plans and documents, monitoring, evaluating, conducting inspections, overseeing performance of delegated program elements, providing technical assistance and supporting overhead expenses that are directly related to these activities.

(2) The annual fee paid by a permittee for any permit issued under this chapter shall be determined by the number of residences or residential equivalents contributing to the permittee's biosolids management system. If residences or residential equivalents cannot be determined or reasonably estimated, fees shall be based on other appropriate criteria.

(3) The biosolids permit account is created in the state treasury. All receipts from fees under this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of administering permits under this chapter.

(4) The department shall ~~((present a biennial progress report on the use of moneys from the biosolids permit account to the legislature. The first report is due on or before December 31, 1998, and thereafter on or before December 31st of odd numbered years. The report shall consist of))~~ make available on the web site information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(5) The department shall work with the regulated community and local health departments to study the feasibility of modifying the fee schedule to support delegated local health departments and reduce local health department fees paid by biosolids permittees.

**Sec. 8.** RCW 70.120A.050 and 2008 c 32 s 2 are each amended to read as follows:

(1) No model year 2010 or subsequent model year new passenger car, light duty truck, or medium duty passenger vehicle may be sold in Washington unless there is securely and conspicuously affixed in a clearly visible location a label on which the manufacturer clearly discloses comparative greenhouse gas emissions for that new vehicle.

(2) The label required by this section should include a greenhouse gas index or rating system that contains quantitative and graphical information presented in a continuous, easy-to-read scale that compares the greenhouse gas emissions from the vehicle with the average projected greenhouse gas emissions from all passenger cars, light duty trucks, and medium duty passenger vehicles of the same model year. For reference purposes, the index or rating system should also identify the greenhouse gas emissions from the vehicle model of that same model year that has the lowest greenhouse gas emissions.

(3) The index or rating system included in the label under subsection (2) of this section shall be updated as necessary to ensure that the differences in greenhouse gas emissions among vehicles are readily apparent to the consumer.

(4) An automobile manufacturer may apply to the department of ecology for approval of an alternative to the disclosure labeling requirement that is at least as effective in providing notification and disclosure of the vehicle's greenhouse gas emissions as is the labeling required by this section.

(5) A label that complies with the requirements of the California greenhouse gas vehicle labeling program shall be deemed to meet the requirements of this section and any rules adopted under this section.

(6) The department of ecology may adopt such rules as are necessary to implement this section.

~~((7) The department of ecology shall provide a status report to the appropriate committees of the legislature on or before December 1, 2008, (a) outlining its approach and progress toward implementing a greenhouse gas vehicle emissions disclosure labeling program for Washington, (b) providing an update on the status of California's greenhouse gas vehicle labeling program, and (c) making recommendations as necessary for legislation to meet the intent and purpose of chapter 32, Laws of 2008 by the 2010 model year.))~~

**Sec. 9.** RCW 90.42.130 and 2003 c 144 s 5 are each amended to read as follows:

(1) The department shall seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington state where water banking could assist in providing water supplies for instream and out-of-stream uses. ~~((The department shall summarize any comments received on water banking and submit a report, including any recommendations, to the appropriate committees of the legislature for their consideration in the subsequent legislative session.))~~

(2) ~~((By December 31st of every even-numbered year.))~~ The department shall ~~((submit a report to the appropriate committees of the legislature on water banking activities authorized under RCW 90.42.100. The report shall:~~

~~(a) Evaluate the effectiveness of water banking in meeting the policies and objectives of this chapter;~~

~~(b) Describe any statutory, regulatory, or other impediments to water banking in other areas of the state; and~~



~~(e) Identify other basins or regions that may benefit from authorization for the department to use the trust water [rights] program for water banking purposes))~~ maintain information on its web site regarding water banking, including information on water banks and related programs in various areas of the state.

**Sec. 10.** RCW 90.44.052 and 2003 c 307 s 2 are each amended to read as follows:

(1) On a pilot project basis, the use of water for domestic use in clustered residential developments is exempt as described in subsection (2) of this section from the permit requirements of RCW 90.44.050 in Whitman county. The department must review the use of water under this section and its impact on water resources in the county and ~~((report to the legislature by December 31st of each even-numbered year through 2016 regarding its review))~~ maintain information regarding the pilot project on its web site.

(2) For the pilot project, the domestic use of water for a clustered residential development is exempt from the permit requirements of RCW 90.44.050 for an amount of water that is not more than one thousand two hundred gallons a day per residence for a residential development that has an overall density equal to or less than one residence per ten acres and a minimum of six homes.

(3) No new right to use water may be established for a clustered development under this section where the first residential use of water for the development begins after December 31, 2015.

**Sec. 11.** RCW 90.48.545 and 2009 c 449 s 2 are each amended to read as follows:

(1) As funding to do so becomes available, the department shall create a storm water technical resource center in partnership with a university, nonprofit organization, or other public or private entity to provide tools for storm water management. The center shall use its authority to support the duties listed in this subsection through research, development, technology demonstration, technology transfer, education, outreach, recognition, and training programs. The center may:

(a) Review and evaluate emerging storm water technologies;

(b) Research and develop innovative and cost-effective technical solutions to remove pollutants from runoff and to reduce or eliminate storm water discharges;

(c) Conduct pilot projects to test technical solutions;

(d) Serve as a clearinghouse and outreach center for information on storm water technology;

(e) Assist in the development of storm water control methods to better protect water quality, including source control, product substitution, pollution prevention, and storm water treatment;

(f) Coordinate with federal, state, and local agencies and private organizations in administering programs related to storm water control measures; and

(g) Collaborate with existing storm water outreach programs.

(2) The department shall consult with an advisory committee in the development of the storm water technical resource center. The advisory committee must include representatives from relevant state agencies, local

governments, the business community, the environmental community, tribes, and the building and development industry.

(3) The department, in consultation with the storm water technical resource center advisory committee, shall identify a funding strategy for funding the storm water technical resource center.

(4) The department shall encourage all interested parties to help and support the technical resource center with in-kind services.

(5) The department and other partners in the center shall ((prepare and submit a biennial progress report to the legislature)) in even-numbered years inform the appropriate legislative committees of the progress made in achieving the objectives of this section.

**Sec. 12.** RCW 90.80.150 and 2001 c 237 s 21 are each amended to read as follows:

The department shall ~~((report biennially by December 31st of each even-numbered year to the appropriate committees of the legislature on))~~ maintain information on its web site concerning the boards formed or sought to be formed under the authority of this chapter, the transfer applications reviewed and other activities conducted by the boards, and the funding of such boards. Conservancy boards must provide information regarding their activities to the department to assist the department in ((preparing the report)) updating this information at least biennially in even-numbered years.

**Sec. 13.** RCW 90.82.043 and 2007 c 445 s 6 are each amended to read as follows:

(1) Within one year of accepting funding under RCW 90.82.040(2)(e), the planning unit must complete a detailed implementation plan. Submittal of a detailed implementation plan to the department is a condition of receiving grants for the second and all subsequent years of the phase four grant.

(2) Each implementation plan must contain strategies to provide sufficient water for: (a) Production agriculture; (b) commercial, industrial, and residential use; and (c) instream flows. Each implementation plan must contain timelines to achieve these strategies and interim milestones to measure progress.

(3) The implementation plan must clearly define coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms.

(4) In developing the implementation plan, the planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

~~((5)(a) By December 1, 2003, and by December 1st of each subsequent year, the director of the department shall report to the appropriate legislative standing committees regarding statutory changes necessary to enable state agency approval or permit decision making needed to implement a plan approved under this chapter.~~

~~(b) Beginning with the December 1, 2007, report, and then every two years thereafter, the director shall include in each report the extent to which reclaimed water has been identified in the watershed plans as potential sources or strategies to meet future water needs, and provisions in any watershed implementation plans that discuss barriers to implementation of the water reuse elements of~~

~~those plans. The department's report shall include an estimate of the potential cost of reclaimed water facilities and identification of potential sources of funding for them.))~~

NEW SECTION. **Sec. 14.** The following acts or parts of acts are each repealed:

- (1) RCW 70.95.545 (Tire recycling—Report) and 2002 c 299 s 9;
- (2) RCW 70.120A.040 (Reports) and 2005 c 295 s 9; and
- (3) RCW 90.80.901 (Reports to the legislature) and 2001 c 237 s 32.

Passed by the House February 18, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 77

[House Bill 2700]

### SPECIAL LICENSE PLATES—BREAST CANCER AWARENESS

AN ACT Relating to breast cancer awareness special license plates; amending RCW 46.18.200, 46.17.220, 46.68.425, and 43.70.327; reenacting and amending RCW 46.18.060; adding a new section to chapter 46.04 RCW; and providing an effective date.

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

**Sec. 1.** RCW 46.18.200 and 2013 c 286 s 1 are each amended to read as follows:

(1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

| LICENSE PLATE                  | DESCRIPTION, SYMBOL, OR ARTWORK  |
|--------------------------------|--|
| 4-H                            | Displays the "4-H" logo.   |
| Armed forces collection        | Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard. |
| <u>Breast cancer awareness</u> | <u>Displays a pink ribbon symbolizing breast cancer awareness.</u>   |

|  |  |
|--|--|
| Endangered wildlife                      | Displays a symbol or artwork symbolizing endangered wildlife in Washington state.  |
| Gonzaga University alumni association    | Recognizes the Gonzaga University alumni association.  |
| Helping kids speak                       | Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.  |
| Keep kids safe                           | Recognizes efforts to prevent child abuse and neglect.   |
| Law enforcement memorial                 | Honors law enforcement officers in Washington killed in the line of duty.  |
| Music matters                            | Displays the "Music Matters" logo.   |
| Professional firefighters and paramedics | Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.   |
| Seattle Seahawks                         | Displays the "Seattle Seahawks" logo.  |
| Seattle Sounders FC                      | Displays the "Seattle Sounders FC" logo.   |
| Share the road                           | Recognizes an organization that promotes bicycle safety and awareness education.   |
| Ski & ride Washington                    | Recognizes the Washington snowsports industry.   |
| State flower                             | Recognizes the Washington state flower.  |
| Volunteer firefighters                   | Recognizes volunteer firefighters.   |
| Washington lighthouses                   | Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.  |
| Washington state parks                   | Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.   |
| Washington's national park fund          | Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks. |
| Washington's wildlife collection         | Recognizes Washington's wildlife.  |

- We love our pets Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
- Wild on Washington Symbolizes wildlife viewing in Washington state.

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction.

**Sec. 2.** RCW 46.17.220 and 2013 c 286 s 2 are each amended to read as follows:

(1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

| PLATE TYPE  | INITIAL FEE    | RENEWAL FEE    | DISTRIBUTED UNDER              |
|---|----------------|----------------|--------------------------------|
| (a) 4-H   | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |
| (b) Amateur radio license   | \$ 5.00        | N/A            | RCW 46.68.070                  |
| (c) Armed forces  | \$ 40.00       | \$ 30.00       | RCW 46.68.425                  |
| (d) Baseball stadium  | \$ 40.00       | \$ 30.00       | Subsection (2) of this section |
| (e) <u>Breast cancer awareness</u>                                  | <u>\$40.00</u> | <u>\$30.00</u> | <u>RCW 46.68.425</u>           |
| ( <del>f</del> ) Collector vehicle                                  | \$ 35.00       | N/A            | RCW 46.68.030                  |
| ( <del>g</del> ) ( <u>g</u> ) Collegiate                            | \$ 40.00       | \$ 30.00       | RCW 46.68.430                  |
| ( <del>h</del> ) ( <u>h</u> ) Endangered wildlife                   | \$ 40.00       | \$ 30.00       | RCW 46.68.425                  |
| ( <del>h</del> ) ( <u>i</u> ) Gonzaga University alumni association | \$ 40.00       | \$ 30.00       | RCW 46.68.420                  |

|  |          |          |               |
|--|----------|----------|---------------|
| <del>((i))</del> <u>(j)</u> Helping kids speak                       | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((j))</del> <u>(k)</u> Horseless carriage                       | \$ 35.00 | N/A      | RCW 46.68.030 |
| <del>((k))</del> <u>(l)</u> Keep kids safe                           | \$ 45.00 | \$ 30.00 | RCW 46.68.425 |
| <del>((l))</del> <u>(m)</u> Law enforcement memorial                 | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((m))</del> <u>(n)</u> Military affiliate radio system          | \$ 5.00  | N/A      | RCW 46.68.070 |
| <del>((n))</del> <u>(o)</u> Music matters                            | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((o))</del> <u>(p)</u> Professional firefighters and paramedics | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((p))</del> <u>(q)</u> Ride share                               | \$ 25.00 | N/A      | RCW 46.68.030 |
| <del>((q))</del> <u>(r)</u> Seattle Seahawks                         | \$40.00  | \$30.00  | RCW 46.68.420 |
| <del>((r))</del> <u>(s)</u> Seattle Sounders FC                      | \$40.00  | \$30.00  | RCW 46.68.420 |
| <del>((s))</del> <u>(t)</u> Share the road                           | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((t))</del> <u>(u)</u> Ski & ride Washington                    | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((u))</del> <u>(v)</u> Square dancer                            | \$ 40.00 | N/A      | RCW 46.68.070 |
| <del>((v))</del> <u>(w)</u> State flower                             | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((w))</del> <u>(x)</u> Volunteer firefighters                   | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((x))</del> <u>(y)</u> Washington lighthouses                   | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((y))</del> <u>(z)</u> Washington state parks                   | \$ 40.00 | \$ 30.00 | RCW 46.68.425 |
| <del>((z))</del> <u>(aa)</u> Washington's national parks             | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((aa))</del> <u>(bb)</u> Washington's wildlife collection       | \$ 40.00 | \$ 30.00 | RCW 46.68.425 |
| <del>((bb))</del> <u>(cc)</u> We love our pets                       | \$ 40.00 | \$ 30.00 | RCW 46.68.420 |
| <del>((cc))</del> <u>(dd)</u> Wild on Washington                     | \$ 40.00 | \$ 30.00 | RCW 46.68.425 |

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must 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.

**Sec. 3.** RCW 46.68.425 and 2011 c 171 s 88 are each amended to read as follows:

- (1) The department shall:
  - (a) Collect special license plate fees established under RCW 46.17.220;
  - (b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and
  - (c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle fund until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fees to the following accounts by special license plate type:

| SPECIAL LICENSE PLATE TYPE       | ACCOUNT              | CONDITIONS FOR USE OF FUNDS   |
|----------------------------------|----------------------|---|
| Armed forces                     | RCW 43.60A.140       | N/A   |
| <u>Breast cancer awareness</u>   | <u>RCW 43.70.327</u> | <u>Must be used only by the department of health for efforts consistent with the breast, cervical, and colon health program</u> |
| Endangered wildlife              | RCW 77.12.170        | Must be used only for the department of fish and wildlife's endangered wildlife program activities                              |
| Keep kids safe                   | RCW 43.121.100       | As specified in RCW ((43.121.050)) <u>43.121.100</u>  |
| Washington state parks           | RCW 79A.05.059       | Provide public educational opportunities and enhancement of Washington state parks  |
| Washington's wildlife collection | RCW 77.12.170        | Only for the department of fish and wildlife's game species management activities   |
| Wild on Washington               | RCW 77.12.170        | Dedicated to the department of fish and wildlife's watchable wildlife activities, as defined in RCW 77.32.560                   |

**Sec. 4.** RCW 43.70.327 and 2001 c 80 s 3 are each amended to read as follows:

(1) The public health supplemental account is created in the state treasury. All receipts from gifts, bequests, devises, or funds, whose use is determined to further the purpose of maintaining and improving the health of Washington residents through the public health system, and all receipts from breast cancer awareness special license plate fees collected under RCW 46.17.220(1)(e), must be deposited into the account. Money in the account may be spent only after

appropriation. Expenditures from the account may be used only for maintaining and improving the health of Washington residents through the public health system and as specified under RCW 46.68.425(2). Expenditures from the account shall not be used to pay for or add permanent full-time equivalent staff positions.

(2) The department shall file an annual statement of the financial condition, transactions, and affairs of any program funded under this section in a form and manner prescribed by the office of financial management. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

**Sec. 5.** RCW 46.18.060 and 2013 c 306 s 703 and 2013 c 286 s 5 are each reenacted and amended to read as follows:

(1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee.

(3) In order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2015. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The limitations under subsection (3) of this section do not apply to the following special license plates:

(a) 4-H license plates created under RCW 46.18.200;

(b) Breast cancer awareness license plates created under RCW 46.18.200;

(c) Gold star license plates created under RCW 46.18.245;

~~((e))~~ (d) Music Matters license plates created under RCW 46.18.200;

~~((d))~~ (e) Seattle Seahawks license plates created under RCW 46.18.200;

~~((e))~~ (f) Seattle Sounders FC license plates created under RCW 46.18.200;

~~((f))~~ (g) State flower license plates created under RCW 46.18.200;

~~((g))~~ (h) Volunteer firefighter license plates created under RCW 46.18.200.



**NEW SECTION. Sec. 6.** A new section is added to chapter 46.04 RCW to read as follows:

"Breast cancer awareness license plates" means special license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing breast cancer awareness.

**NEW SECTION. Sec. 7.** This act takes effect January 1, 2015.

Passed by the House February 11, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 78

[Senate Bill 5310]

### SENIOR CENTER LICENSEES

AN ACT Relating to senior center licenses; amending RCW 66.20.300 and 66.20.310; and adding a new section to chapter 66.24 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 66.24 RCW to read as follows:

(1) There shall be a license to be designated as a senior center license. This shall be a license issued to a nonprofit organization whose primary service is providing recreational and social activities for seniors on the licensed premises. This license shall permit the licensee to sell spirits by the individual glass, including mixed drinks and cocktails mixed on the premises only, beer and wine, at retail for consumption on the premises.

(2) To qualify for this license, the applicant entity must:

- (a) Be a nonprofit organization under chapter 24.03 RCW;
- (b) Be open at times and durations established by the board; and
- (c) Provide limited food service as defined by the board.

(3) All alcohol servers must have a valid mandatory alcohol server training permit.

(4) The board shall adopt rules to implement this section.

(5) The annual fee for this license shall be seven hundred twenty dollars.

**Sec. 2.** RCW 66.20.300 and 2011 c 325 s 5 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, ~~((and))~~ 66.24.610, and section 1 of this act;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363.

**Sec. 3.** RCW 66.20.310 and 2011 c 325 s 4 are each amended to read as follows:

(1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise shall be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, 66.24.600, ~~((and))~~ 66.24.610, and section 1 of this act may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363.

Passed by the Senate February 10, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 79

[Substitute Senate Bill 5467]

### DEPARTMENT OF LICENSING—VEHICLE OWNER LISTS

AN ACT Relating to vehicle owner list furnishment requirements; amending RCW 46.12.630; and adding a new section to chapter 46.68 RCW.

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

**Sec. 1.** RCW 46.12.630 and 2013 c 306 s 702 are each amended to read as follows:

~~((In addition to any other authority which it may have,)) (1) The department of licensing ((may)) must furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this ((section)) subsection to((:~~

~~(1)(a)) the manufacturers of motor vehicles or motor vehicle components, or their authorized agents, to ((be used:~~

~~(i) To)) enable those manufacturers to carry out the provisions of ((the national traffic and motor vehicle safety act of 1966 (15 U.S.C. Sec. 1382-1418),~~

~~including amendments or additions thereto, respecting safety-related defects in motor vehicles; or~~

~~(ii) During the 2011-2013 fiscal biennium, in research activities, and in producing statistical reports, as long as the personal information is not published, redisclosed, or used to contact individuals; or~~

~~(b) During fiscal year 2014, an entity that is an authorized agent of a motor vehicle manufacturer,) Titles I and IV of the anti car theft act of 1992, the automobile information disclosure act (15 U.S.C. Sec. 1231 et seq.), the clean air act (42 U.S.C. Sec. 7401 et seq.), and 49 U.S.C.S. Secs. 30101-30183, 30501-30505, and 32101-33118, as these acts existed on January 1, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. However, the department may only provide a vehicle or vehicle component manufacturer, or its authorized agent, lists of registered or legal owners who purchased or leased a vehicle manufactured by that manufacturer or a vehicle containing a component manufactured by that component manufacturer. Manufacturers or authorized agents receiving information on behalf of one manufacturer must not disclose this information to any other third party that is not necessary to carry out the purposes of this section.~~

~~(2) The department of licensing may furnish lists of registered and legal owners of motor vehicles, only to the entities and only for the purposes specified in this section, to:~~

~~(a) The manufacturers of motor vehicles, legitimate businesses as defined by the department in rule, or their authorized agents, for purposes of using lists of registered and legal owner information to conduct research activities and produce statistical reports, as long as the entity does not allow personal information received under this section to be published, redisclosed, or used to contact individuals. ((The department must charge an amount sufficient to cover the full cost of providing the data requested under this subsection (1)(b). Full cost of providing the data includes the information technology, administrative, and contract oversight costs)) For purposes of this subsection (2)(a), the department of licensing may only provide the manufacturer of a motor vehicle, or the manufacturer of components contained in a motor vehicle, the lists of registered or legal owners who purchased or leased a vehicle manufactured by that manufacturer or a vehicle containing components manufactured by that component manufacturer;~~

~~((2)) (b) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;~~

~~((3)) (c) Any insurer or insurance support organization, a self-insured entity, or its agents, employees, or contractors for use in connection with claims investigation activities, antifraud activities, rating, or underwriting;~~

~~(d) Any local governmental entity or its agents for use in providing notice to owners of towed and impounded vehicles;~~

~~(e) A government agency, commercial parking company, or its agents requiring the names and addresses of registered owners to notify them of~~

outstanding parking violations. Subject to the disclosure agreement provisions of RCW 46.12.635 and the requirements of Executive Order 97-01, the department may provide only the parts of the list that are required for completion of the work required of the company;

~~((4))~~ (f) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle excise tax, licensing, title, and registration information to motor vehicle dealers;

~~((5))~~ (g) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing; or

~~((6))~~ (h) A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators.

(3) Personal information received by an entity listed in subsection (1) or (2) of this section may not be released for direct marketing purposes.

(4) Prior to the release of any lists of vehicle owners under subsection (1) or (2) of this section, the department must enter into a contract with the entity authorized to receive the data. The contract must include:

(a) A requirement that the department or its agent conduct both regular permissible use and data security audits subject to the following conditions and limitations:

(i) The data security audits must demonstrate compliance with the data security standards adopted by the office of the chief information officer.

(ii) When determining whether to conduct an audit under this subsection, the department must first take into consideration any independent third-party audit a data recipient has had before requiring that any additional audits be performed. If the independent third-party audit is a data security audit and it meets both recognized national or international standards and the standards adopted by the office of the chief information officer pursuant to (a)(i) of this subsection, the department must accept the audit and the audit is deemed to satisfy the conditions set out in this subsection (4)(a). If the independent third-party audit is a permissible use audit and it meets recognized national or international standards, the department must accept the audit and the audit is deemed to satisfy the conditions set out in this subsection (4)(a); and

(b) A provision that the cost of the audits performed pursuant to this subsection must be borne by the data recipient. A new data recipient must bear the initial cost to set up a system to disburse the data to the data recipient.

(5)(a) Beginning January 1, 2015, the department must collect a fee of ten dollars per one thousand individual registered or legal owners included on a list requested by a private entity under subsection (1) or (2) of this section. Beginning January 1, 2016, the department must collect a fee of twenty dollars per one thousand individual registered or legal vehicle owners included on a list requested by a private entity under subsection (1) or (2) of this section. Beginning January 1, 2021, the department must collect a fee of twenty-five dollars per one thousand individual registered or legal owners included on a list requested by a private entity under subsection (1) or (2) of this section. The department must prorate the fee when the request is for less than a full one thousand records.

(b) In lieu of the fee specified in (a) of this subsection, if the request requires a daily, weekly, monthly, or other regular update of those vehicle records that have changed:

(i) Beginning January 1, 2015, the department must collect a fee of one cent per individual registered or legal vehicle owner record provided to the private entity:

(ii) Beginning January 1, 2016, the department must collect a fee of two cents per individual registered or legal vehicle owner record provided to the private entity:

(iii) Beginning January 1, 2021, the department must collect a fee of two and one-half cents per individual registered or legal vehicle owner record provided to the private entity.

(c) The department must deposit any moneys collected under this subsection to the department of licensing technology improvement and data management account created in section 2 of this act.

(6) Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

(7) If a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer, governmental agency, commercial parking company, ~~((authorized agent,))~~ contractor, financial institution, insurer, insurance support organization, self-insured entity, legitimate business entity, toll facility operator, or ~~((their))~~ any authorized agent~~((s))~~ or contractor~~((s))~~ responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing.

(8) For purposes of this section, "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, or medical or disability information. However, an individual's photograph, social security number, and any medical or disability-related information is considered highly restricted personal information and may not be released under this section.

NEW SECTION. Sec. 2. A new section is added to chapter 46.68 RCW to read as follows:

The department of licensing technology improvement and data management account is created in the highway safety fund. All receipts from fees collected under RCW 46.12.630(5) must be deposited into the account. Expenditures from the account may be used only for investments in technology and data management at the department. Moneys in the account may be spent only after appropriation.

Passed by the Senate March 11, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

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## CHAPTER 80

[Second Engrossed Substitute Senate Bill 5785]

## LICENSE PLATES—DISPLAY—REPLACEMENT

AN ACT Relating to the display and replacement of license plates; amending RCW 46.16A.200, 46.16A.020, 46.17.200, and 46.18.130; reenacting and amending RCW 46.16A.110 and 46.18.140; and creating a new section.

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

**Sec. 1.** RCW 46.16A.200 and 2011 c 171 s 46 are each amended to read as follows:

(1) **Design.** All license plates may be obtained by the director from the metal working plant of a state correctional facility or from any source in accordance with existing state of Washington purchasing procedures. License plates:

(a) May vary in background, color, and design;

(b) Must be legible and clearly identifiable as a Washington state license plate;

(c) Must designate the name of the state of Washington without abbreviation;

(d) Must be treated with fully reflectorized materials designed to increase visibility and legibility at night;

(e) Must be of a size and color and show the registration period as determined by the director; and

(f) Before July 1, 2010, may display a symbol or artwork approved by the former special license plate review board and the legislature. Beginning July 1, 2010, special license plate series approved by the department and enacted into law by the legislature may display a symbol or artwork approved by the department.

(2) **Exceptions to reflectorized materials.** License plates issued before January 1, 1968, are not required to be treated with reflectorized materials.

(3) **Dealer license plates.** License plates issued to a dealer must contain an indication that the license plates have been issued to a vehicle dealer.

(4)(a) **Furnished.** The director shall furnish to all persons making satisfactory application for a vehicle registration:

(i) Two identical license plates each containing the license plate number; or

(ii) One license plate if the vehicle is a trailer, semitrailer, camper, moped, collector vehicle, horseless carriage, or motorcycle.

(b) The director may adopt types of license plates to be used as long as the license plates are legible.

(5)(a) **Display.** License plates must be:

(i) Attached conspicuously at the front and rear of each vehicle if two license plates have been issued;

(ii) Attached to the rear of the vehicle if one license plate has been issued;

(iii) Kept clean and be able to be plainly seen and read at all times; and

(iv) Attached in a horizontal position at a distance of not more than four feet from the ground.

(b) The Washington state patrol may grant exceptions to this subsection if the body construction of the vehicle makes compliance with this section impossible.

(6) **Change of license classification.** A person who has altered a vehicle that makes the current license plate or plates invalid for the vehicle's use shall:

(a) Surrender the current license plate or plates to the department, county auditor or other agent, or subagent appointed by the director;

(b) Apply for a new license plate or plates; and

(c) Pay a change of classification fee required under RCW 46.17.310.

(7) **Unlawful acts.** It is unlawful to:

(a) Display a license plate or plates on the front or rear of any vehicle that were not issued by the director for the vehicle;

(b) Display a license plate or plates on any vehicle that have been changed, altered, or disfigured, or have become illegible;

(c) Use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. License plate frames may be used on license plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the license plates can be plainly seen and read at all times;

(d) Operate a vehicle unless a valid license plate or plates are attached as required under this section;

(e) Transfer a license plate or plates issued under this chapter between two or more vehicles without first making application to transfer the license plates. A violation of this subsection (7)(e) is a traffic infraction subject to a fine not to exceed five hundred dollars. Any law enforcement agency that determines that a license plate or plates have been transferred between two or more vehicles shall confiscate the license plate or plates and return them to the department for nullification along with full details of the reasons for confiscation. Each vehicle identified in the transfer will be issued a new license plate or plates upon application by the owner or owners and the payment of full fees and taxes; or

(f) Fail, neglect, or refuse to endorse the registration certificate (~~and deliver the license plate or plates to the purchaser or transferee of the vehicle~~), except as authorized under this section.

(8) **Transfer.** (a) Standard issue license plates (~~follow the vehicle~~) must be replaced when ownership of the vehicle changes (~~unless~~), pursuant to subsection (9)(a)(i) of this section, but the registered owner (~~wishes to~~) may retain the license plates and transfer them to a replacement vehicle of the same use. In addition to all other taxes and fees due upon change in ownership, a registered owner wishing to keep standard issue license plates shall pay the license plate transfer fee required under RCW 46.17.200(1)(c) when applying for license plate transfer.

(b) Special license plates and personalized license plates may be treated in the same manner as described in (a) of this subsection unless otherwise limited by law.

(c) License plates issued to the state or any county, city, town, school district, or other political subdivision entitled to exemption as provided by law may be treated in the same manner as described in (a) of this subsection.

(d) License plate replacement is not required when a change in vehicle ownership is the result of one or more of the following circumstances:

(i) When adding a lien holder to the certificate of title or removing a lien holder from the certificate of title;



(ii) When a vehicle is transferred from one spouse or registered domestic partner to another;

(iii) When removing a deceased spouse or registered domestic partner from the certificate of title;

(iv) When a vehicle is transferred by gift or inheritance to one or more members of the registered owner's immediate family;

(v) When a vehicle is transferred into or out of a trust in which the registered owner or one or more immediate family members of the registered owner is the beneficiary;

(vi) When a leaseholder buys out the leased vehicle; or

(vii) When a person changes his or her name.

**(9) Replacement.** (a) Except as provided in subsection (8)(a) of this section, an owner or the owner's authorized representative ((shall)) must apply for a replacement license plate or plates: (i) When taking ownership of the vehicle; (ii) if the current license plate or plates assigned to the vehicle have been lost, defaced, or destroyed((-)); or (iii) if one or both plates have become so illegible or are in such a condition as to be difficult to distinguish. An owner or the owner's authorized representative may apply for a replacement license plate or plates at any time the owner chooses. The department shall offer to owners the option of retaining the current license plate number when obtaining replacement license plates for the fee required in RCW 46.17.200(1)(b).

(b) The application for a replacement license plate or plates must:

(i) Be on a form furnished or approved by the director; and

(ii) Be accompanied by the fee required under RCW 46.17.200(1)(a).

(c) When a vehicle is sold to a vehicle dealer for resale, the application for a replacement plate or plates need not be made until the vehicle is sold by the vehicle dealer.

(d) The department shall not require the payment of any fee to replace a license plate or plates for vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty.

~~(10) ((**Periodic replacement.** License plates must be replaced periodically to ensure maximum legibility and reflectivity. The department shall:~~

~~(a) Use empirical studies documenting the longevity of the reflective materials used to make license plates;~~

~~(b) Determine how frequently license plates must be replaced; and~~

~~(c) Offer to owners the option of retaining the current license plate number when obtaining replacement license plates for the fee required in RCW 46.17.200(1)(b).~~

~~(11) (**Periodic**) **Replacement—Exceptions.** The following license plates are not required to be ((periodically)) replaced as required in subsection ((10)) (9) of this section:~~

~~(a) Horseless carriage license plates issued under RCW 46.18.255 before January 1, 1987;~~

~~(b) Congressional Medal of Honor license plates issued under RCW 46.18.230;~~

(c) License plates for commercial motor vehicles with a gross weight greater than twenty-six thousand pounds.

~~((12))~~ **(11) Rules.** The department may adopt rules to implement this section.

~~((13))~~ **(12) Tabs or emblems.** The director may issue tabs or emblems to be attached to license plates or elsewhere on the vehicle to signify initial registration and renewals. Renewals become effective when tabs or emblems have been issued and properly displayed (~~on license plates~~).

**Sec. 2.** RCW 46.16A.020 and 2010 c 161 s 402 are each amended to read as follows:

(1) The department, county auditor or other agent, or subagent appointed by the director shall assign a new registration year to a vehicle if:

(a) The ~~((Washington state vehicle registration has expired and))~~ registered ownership ~~((to))~~ of the vehicle is being transferred, except as provided in subsection (4) of this section. The renewed ~~((license))~~ vehicle registration is valid for a full twelve-month period unless: (i) The vehicle changes ownership during the twelve-month period, in which case the registration expires; or (ii) a specific expiration date is required by law, rule, or program; or

(b) The Washington vehicle registration has expired and the registered owner:

(i) Is a member of the United States armed forces;

(ii) Was stationed outside of Washington under military orders during the prior vehicle registration year; and

(iii) Provides the department a copy of the military orders.

(2) Each registration year may be divided into twelve registration months. Each registration month begins at 12:01 a.m. on a day of the month assigned by the department and ends at 12:00 a.m. on the same day the following month.

(3) A registration period extends through the end of the next business day when the final day of a registration year or month falls on a Saturday, Sunday, or legal holiday.

(4) A vehicle registration does not expire when a change in vehicle ownership is the result of one or more of the following circumstances:

(a) When adding a lien holder to the certificate of title or removing a lien holder from the certificate of title;

(b) When a vehicle is transferred from one spouse or registered domestic partner to another;

(c) When removing a deceased spouse or registered domestic partner from the certificate of title;

(d) When a vehicle is transferred by gift or inheritance to one or more members of the registered owner's immediate family;

(e) When a vehicle is transferred into or out of a trust in which the registered owner or one or more immediate family members of the registered owner is the beneficiary;

(f) When a leaseholder buys out the leased vehicle; or

(g) When a person changes his or her name.

**Sec. 3.** RCW 46.16A.110 and 2010 c 161 s 428 and 2010 c 8 s 9012 are each reenacted and amended to read as follows:

(1) A registered owner or the registered owner's authorized representative must apply for a renewal vehicle registration to the department, county auditor or other agent, or subagent appointed by the director on a form approved by the director. The application for a renewal vehicle registration must be accompanied by a draft, money order, certified bank check, or cash for all fees and taxes required by law for the application for a renewal vehicle registration.

(2)(a) When a vehicle changes ownership, the person taking ownership or his or her authorized representative must apply for a renewal vehicle registration as provided in subsection (1) of this section and, except as provided in (b) of this subsection, pay all the taxes and fees that are due at the time of registration renewal. For the purposes of this section, when a vehicle is sold to a vehicle dealer for resale, the application for a renewal registration need not be made until the vehicle is sold by the vehicle dealer.

(b) The person taking ownership or his or her authorized representative must be given credit for the portion of a motor vehicle excise tax, including the motor vehicle excise tax collected under RCW 81.104.160, that reflects the remaining period for which the tax was initially paid by the previous owner.

(3) An application and the fees and taxes for a renewal vehicle registration must be handled in the same manner as an original vehicle registration application. The registration does not need to show the name of the lien holder when the application for renewal vehicle registration becomes the renewal registration upon validation.

~~((3))~~ (4) A person expecting to be out of state during the normal renewal period of a vehicle registration may renew a vehicle registration and have license plates or tabs preissued by applying for a renewal as described in subsection (1) of this section. A vehicle registration may be renewed for the subsequent registration year up to eighteen months before the current expiration date and must be displayed from the date of issue or from the day of the expiration of the current registration year, whichever date is later.

~~((4))~~ (5) An application for a renewal vehicle registration is not required for those vehicles owned, rented, or leased by:

(a) The state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington; or

(b) A governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior.

**Sec. 4.** RCW 46.17.200 and 2012 c 74 s 3 are each amended to read as follows:

(1) In addition to all other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge:

(a) The following license plate fees for each license plate, unless the owner or type of vehicle is exempt from payment:

| FEE TYPE       | FEE      | DISTRIBUTION  |
|----------------|----------|---------------|
| Original issue | \$ 10.00 | RCW 46.68.070 |
| Reflectivity   | \$ 2.00  | RCW 46.68.070 |
| Replacement    | \$ 10.00 | RCW 46.68.070 |

|                               |         |               |
|-------------------------------|---------|---------------|
| Original issue,<br>motorcycle | \$ 4.00 | RCW 46.68.070 |
| Replacement,<br>motorcycle    | \$ 4.00 | RCW 46.68.070 |
| Original issue, moped         | \$1.50  | RCW 46.68.070 |

(b) A license plate retention fee, as required under RCW 46.16A.200(~~((10)(c))~~) (9)(a), of twenty dollars if the owner wishes to retain the current license plate number upon license plate replacement, unless the owner or type of vehicle is exempt from payment. The twenty dollar fee must be deposited in the multimodal transportation account created in RCW 47.66.070.

(c) A ten dollar license plate transfer fee, as required under RCW 46.16A.200(8)(a), when transferring standard issue license plates from one vehicle to another, unless the owner or type of vehicle is exempt from payment. The ten dollar license plate transfer fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

(d) Former prisoner of war license plates, as described in RCW 46.18.235, may be transferred to a replacement vehicle upon payment of a five dollar license plate fee, in addition to any other fee required by law.

(2) The department may, upon request, provide license plates that have been used and returned to the department to individuals for nonvehicular use. The department may charge a fee of up to five dollars per license plate to cover costs or recovery for postage and handling. The department may waive the fee for license plates used in educational projects and may, by rule, provide standards for the fee waiver and restrictions on the number of license plates provided to any one person. The fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

**Sec. 5.** RCW 46.18.130 and 2011 c 171 s 68 are each amended to read as follows:

(1) Revenues generated from the sale of special license plates for those sponsoring organizations who used the application process in RCW 46.18.110 must be deposited into the motor vehicle fund created in RCW 46.68.070 until the department determines that the state's implementation costs have been fully reimbursed.

(2) When it is determined that the state has been fully reimbursed the department must notify the house of representatives and senate transportation committees, the sponsoring organization, and the state treasurer, and begin distributing the revenue as otherwise provided by law.

(3) If reimbursement does not occur within two years from the date the special license plate is first offered for sale to the public, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the special license plate series must be discontinued immediately. Special license plates issued before discontinuation are valid until replaced (~~under RCW 46.16A.200(10)~~).

(4) The department shall:

(a) Provide the special license plate applicant with a written receipt for the payment; and

(b) Maintain a record of each special license plate applicant trust account deposit including, but not limited to, the name and address of each special license plate applicant whose funds are being deposited, the amount paid, and the date of the deposit.

(5) After the department receives written notice that the special license plate applicant's application has been approved by the legislature, the director shall request that the money be transferred to the motor vehicle fund created in RCW 46.68.070.

(6) After the department receives written notice that the special license plate applicant's application has been denied by the department or the legislature, the director shall provide a refund to the applicant within thirty days.

(7) After the department receives written notice that the special license plate applicant's application has been withdrawn by the special license plate applicant, the director shall provide a refund to the applicant within thirty days.

**Sec. 6.** RCW 46.18.140 and 2010 1st sp.s. c 7 s 97 and 2010 c 161 s 609 are each reenacted and amended to read as follows:

(1) A special license plate series created by the legislature after January 1, 2011, that has not been reviewed and approved by the department is subject to the following requirements:

(a) The organization sponsoring the license plate series shall, within thirty days of enactment of the legislation creating the special license plate series, submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The prepayment will be credited to the motor vehicle fund created in RCW 46.68.070. The creation and implementation of the special license plate series may not begin until payment is received by the department.

(b) If the sponsoring organization is not able to meet the prepayment requirements in (a) of this subsection and can demonstrate this fact to the satisfaction of the department, the revenues generated from the sale of the special license plates must be deposited in the motor vehicle fund created in RCW 46.68.070 until the department determines that the state's portion of the implementation costs have been fully reimbursed. When it has determined that the state has been fully reimbursed, the department must notify the treasurer to commence distribution of the revenue according to statutory provisions.

(c) The sponsoring organization must provide a proposed special license plate design to the department within thirty days of enactment of the legislation creating the special license plate series.

(2) The state must be reimbursed for its portion of the implementation costs within two years from the date the new special license plate series goes on sale to the public. If the reimbursement does not occur within the two-year time frame, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the special license plate series must be discontinued immediately. Those special license plates issued before discontinuation are valid until replaced ((under RCW 46.16A.200(10))).

(3) If the sponsoring organization ceases to exist or the purpose of the special license plate series ceases to exist, revenues generated from the sale of the special license plates must be deposited into the motor vehicle fund created in RCW 46.68.070.

(4) A sponsoring organization may not seek to redesign its special license plate series until the entire existing inventory is sold or purchased by the organization itself. All costs for the redesign of a special license plate series must be paid by the sponsoring organization.

NEW SECTION. Sec. 7. This act applies to vehicle registrations that are due or become due on or after January 1, 2015.

Passed by the Senate March 11, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

**CHAPTER 81**

[Engrossed Substitute Senate Bill 5972]

**CIVIL ACTIONS—FORESTED LANDS—FIRE DAMAGE**

AN ACT Relating to specifying recovery for fire damages to public or private forested lands; amending RCW 4.24.040 and 4.24.060; adding a new section to chapter 76.04 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. A new section is added to chapter 76.04 RCW to read as follows:

(1) The owner of public or private forested lands may bring a civil action in superior court for property damage to public or private forested lands, including real and personal property on those lands, when the damage results from a fire that started on or spread from public or private forested lands.

(2) Liability under this section attaches to the extent that evidence demonstrates that:

(a) An action or inaction by a person relating to the start or spread of the fire from public or private forested lands constituted negligence or a higher degree of fault; and

(b) The action or inaction under (a) of this subsection was a proximate cause of the property damage.

(3) Recoverable damages under this section are limited to:

(a) Either: (i) The difference in the fair market value of the damaged property immediately before and after the fire. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter 18.140 RCW; or (ii) the reasonable cost of restoring the damaged property to the general condition it was in immediately before the fire, to the extent permitted by Washington law;

(b) The reasonable expenses incurred to suppress or extinguish the fire unless otherwise provided for in this chapter;

(c) Any other objectively verifiable monetary loss, that is not duplicative of the recovery specified under (a) or (b) of this subsection including, but not limited to: Out-of-pocket expenses; loss of earnings; loss of use of property; or loss of business or employment opportunities; and

(d) In actions brought by an Indian tribe for recovery of damages from injury to archaeological objects, archaeological sites, or historic archaeological resources, damages as measured in accordance with WAC 25-48-043 as it existed on the effective date of this section.

(4) This section provides the exclusive cause of action for property damage to public or private forested lands, including real and personal property on those lands, resulting from a fire that started on or spread from public or private forested lands.

(5) The definitions in this subsection only apply throughout this section relating to the specification of damages for fire damage to public and private forested lands, unless the context clearly requires otherwise, and do not apply to and are not intended as a source for interpretation of other sections of this chapter.

(a) "Fair market value" means the amount that a willing buyer would pay to a willing seller for property in an arms-length transaction if both parties were fully informed about all advantages and disadvantages of the property and neither party is acting under a compulsion to sell, as determined by: (i) For real property, a state-certified general real estate appraiser as defined under RCW 18.140.010; and (ii) for personal property, an appraiser qualified to appraise the property based on training and experience. For real property, the state-certified general real estate appraiser must identify and analyze all relevant characteristics and uses of the property including cultural, recreational, and environmental characteristics and uses, to the extent such characteristics or uses contribute to the fair market value of the property based on the highest and best use of the property. The state-certified general real estate appraiser shall expressly address the assumptions and conditions used to evaluate such characteristics and uses, consistent with standards of professional appraisal practice adopted under chapter 18.140 RCW.

(b) "Forest tree species" means a tree species that is capable of producing logs, fiber, or other wood materials that are suitable for the production of lumber, sheeting, pulp, firewood, or other forest products.

(c) "Owner of public or private forested lands" means any person in actual control of public or private forested lands, whether the control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on the land in any manner.

(d) "Person" includes: An individual; a corporation; a public or private entity or organization; a local, state, or federal government or governmental entity; any business organization, including corporations and partnerships; or a group of two or more individuals acting with a common purpose.

(e) "Public or private forested lands" means any lands used or biologically capable of being used for growing forest tree species regardless of the existing use of the land except when the predominant physical use of the land at the time of the fire is not consistent with the growing, conservation, or preservation of forest tree species. Examples of inconsistent uses include, but are not limited to, buildings, airports, parking lots, mining, solid waste disposal, cropfields,

orchards, vineyards, pastures, feedlots, communication sites, and home sites that may include up to ten acres. Public or private forested lands do not include state highways, county roads, railroad rights-of-way, and utility rights-of-way that cross over, under, or through such lands.

**Sec. 2.** RCW 4.24.040 and 2009 c 549 s 1001 are each amended to read as follows:

Except as provided in section 1 of this act, if any person shall for any lawful purpose kindle a fire upon his or her own land, he or she shall do it at such time and in such manner, and shall take such care of it to prevent it from spreading and doing damage to other persons' property, as a prudent and careful person would do, and if he or she fails so to do he or she shall be liable in an action on the case to any person suffering damage thereby to the full amount of such damage.

**Sec. 3.** RCW 4.24.060 and 2011 c 336 s 93 are each amended to read as follows:

The common law right to an action for damages done by fires, is not taken away or diminished by RCW 4.24.040, 4.24.050, and 4.24.060(~~(, but it may be pursued; but)~~). However:

(1) Any person availing himself or herself of the provisions of RCW 4.24.040, shall be barred of his or her action at common law for the damage so sued for(~~(, and)~~);

(2) No action shall be brought at common law for kindling fires in the manner described in RCW 4.24.050(~~(, but)~~). However, if any such fires shall spread and do damage, the person who kindled the ((~~same~~)) fire and any person present and concerned in driving ((~~such~~)) the lumber, by whose act or neglect ((~~such~~)) the fire is suffered to spread and do damage shall be liable in an action on the case for the amount of damages thereby sustained; and

(3) A civil action for property damage to public or private forested lands, including real and personal property on those lands, resulting from a fire that started on or spread from public or private forested lands may be brought only under section 1 of this act.

**NEW SECTION. Sec. 4.** This act does not: Affect or preclude any action relating to the imposition of criminal or civil penalties as authorized by law; affect or preclude the recovery of fire suppression costs as authorized under chapter 76.04 RCW; affect or preclude an action under RCW 4.24.630 against a person who goes onto the land of another without authorization and wrongfully, intentionally, and unreasonably causes a fire resulting in property damage; affect or preclude an action under chapter 27.44 or 27.53 RCW; or affect the provisions of RCW 76.04.016.

**NEW SECTION. Sec. 5.** This act applies prospectively only and not retroactively. It applies only to causes of action that arise on or after the effective date of this section.

Passed by the Senate March 12, 2014.

Passed by the House March 11, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.



## CHAPTER 82

[Substitute Senate Bill 5977]

## SERVICE PRODUCTS—PROTECTION PRODUCT GUARANTEES

AN ACT Relating to the regulation of service contracts and protection product guarantees; and amending RCW 48.110.020 and 48.110.030.

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

**Sec. 1.** RCW 48.110.020 and 2013 c 117 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Administrator" means the person who is responsible for the administration of the service contracts, the service contracts plan, or the protection product guarantees.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.

(4) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

(5) "Incidental costs" means expenses specified in the guarantee incurred by the protection product guarantee holder related to damages to other property caused by the failure of the protection product to perform as provided in the guarantee. "Incidental costs" may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be paid under the provisions of the protection product guarantee in either a fixed amount specified in the protection product guarantee or sales agreement, or by the use of a formula itemizing specific incidental costs incurred by the protection product guarantee holder to be paid.

(6) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(7) "Motor vehicle" means any vehicle subject to registration under chapter 46.16A RCW.

(8) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(9) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(10) "Protection product" means any ~~(product)~~ protective chemical, substance, device, or system offered or sold with a guarantee to repair or replace another product or pay incidental costs upon the failure of the product to perform pursuant to the terms of the protection product guarantee. Protection product does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system of a motor vehicle.

(11) "Protection product guarantee" means a written agreement by a protection product guarantee provider to repair or replace another product or pay incidental costs upon the failure of the protection product to perform pursuant to the terms of the protection product guarantee. The reimbursement of incidental costs promised under a protection product guarantee must be tied to the purchase of a physical product that is formulated or designed to make the specified loss or damage from a specific cause less likely to occur.

(12) "Protection product guarantee holder" means a person who is the purchaser or permitted transferee of a protection product guarantee.

(13) "Protection product guarantee provider" means a person who is contractually obligated to the protection product guarantee holder under the terms of the protection product guarantee. Protection product guarantee provider does not include an authorized insurer providing a reimbursement insurance policy.

(14) "Protection product seller" means the person who sells the protection product to the consumer.

(15) "Provider fee" means the consideration paid by a consumer for a service contract.

(16) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider or a protection product guarantee provider to provide reimbursement to the service contract provider or the protection product guarantee provider or to pay on behalf of the service contract provider or the protection product guarantee provider all contractual obligations incurred by the service contract provider or the protection product guarantee provider under the terms of the insured service contracts or protection product guarantees issued or sold by the service contract provider or the protection product guarantee provider.

(17) "Road hazard" means a hazard that is encountered while driving a motor vehicle. Road hazards may include but are not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(18)(a) "Service contract" means a contract or agreement entered into at any time for consideration over and above the lease or purchase price of the property for any specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship(;) or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, rental, emergency road services, or other expenses relating to the failure of the product or of a component part thereof.

(b) "Service contract" also includes a contract or agreement sold for separately stated consideration for a specific duration to perform any one or more of the following services:

(i) The repair or replacement of tires and/or wheels damaged as a result of coming into contact with road hazards ((including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps)). However, a contract or agreement meeting the definition under this subsection ((+7)) (18)(b) in which the party obligated to perform is either a tire or wheel

manufacturer or a motor vehicle manufacturer is exempt from the requirements of this chapter:

(ii) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(iii) The repair of chips or cracks in, or the replacement of, motor vehicle windshields as a result of damage caused by road hazards;

(iv) The replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen;

(v) Services provided pursuant to a protection product guarantee; and

(vi) Other services approved by rule of the commissioner that are not inconsistent with the provisions of this chapter.

(c) "Service contract" does not include coverage for:

(i) Repair or replacement due to damage to the interior surfaces or to the exterior paint or finish of a vehicle. However, coverage for these types of damage may be offered in connection with the sale of a protection product as defined in this section; or

(ii) Fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system of a motor vehicle.

~~((18))~~ (19) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

~~((19))~~ (20) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

~~((20))~~ (21) "Service contract seller" means the person who sells the service contract to the consumer.

~~((21))~~ (22) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

**Sec. 2.** RCW 48.110.030 and 2011 c 47 s 16 are each amended to read as follows:

(1) A person may not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider must make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant. If the service contract provider is relying on RCW 48.110.050(2)(c) to assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company must also be filed. In lieu of submitting audited financial statements, a service contract provider relying on RCW 48.110.050(2)(a) or 48.110.075(2)(a) to assure the faithful performance of its obligations to service contract holders may comply with the requirements of this subsection (2)(c) by submitting annual financial statements of the applicant that are certified as accurate by two or more officers of the applicant;

(d) An application fee of two hundred fifty dollars, which must be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

(3) Each registered service contract provider must appoint the commissioner as the service contract provider's attorney to receive service of legal process issued against the service contract provider in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the service contract provider.

(a) With the appointment the service contract provider must designate the person to whom the commissioner must forward legal process so served upon him or her.

(b) The appointment is irrevocable, binds any successor in interest or to the assets or liabilities of the service contract provider, and remains in effect for as long as there could be any cause of action against the service contract provider arising out of any of the service contract provider's contracts or obligations in this state.

(c) The service of process must be accomplished and processed in the manner prescribed under RCW 48.02.200.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which must be deposited into the

general fund. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider must keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs.

Passed by the Senate March 10, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 83

[Senate Bill 5999]

### CORPORATE ENTITIES—CONVERSIONS

AN ACT Relating to corporate entity conversions; amending RCW 25.15.085 and 23B.13.020; adding new sections to chapter 25.15 RCW; and adding new sections to chapter 23B.09 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 25.15 RCW under "ARTICLE XI. MERGERS" to read as follows:

**DEFINITIONS.** The definitions in this section apply throughout this article unless the context clearly requires otherwise.

(1) "Converted organization" means the organization into which a converting organization converts under sections 2 through 5 of this act.

(2) "Converting limited liability company" means a converting organization that is a limited liability company.

(3) "Converting organization" means an organization that converts into another organization pursuant to section 2 of this act.

(4) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(5) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not formed for profit.

(6) "Organizational documents" means:

(a) For a domestic or foreign general partnership, its partnership agreement;

(b) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) For a domestic or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable records as provided in its governing statute;

(d) For a business trust, its agreement of trust and declaration of trust;

(e) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(f) For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(7) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

**NEW SECTION. Sec. 2.** A new section is added to chapter 25.15 RCW under "ARTICLE XI. MERGERS" to read as follows:

**CONVERSION.** (1) An organization other than a limited liability company may convert into a limited liability company, and a limited liability company may convert into another organization pursuant to this section and sections 3 through 5 of this act and a plan of conversion, if:

(a) The other organization's governing statute authorizes the conversion;

(b) The conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute; and

(c) The other organization complies with its governing statute in effecting the conversion.

(2) A plan of conversion must be in a record and must include:

(a) The name and form of the organization before conversion;

(b) The name and form of the organization after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of the interests, shares, obligations, or other securities of the converted organization or any other organization, or into cash or other property in whole or part; and

(d) The organizational documents of the converted organization.

**NEW SECTION. Sec. 3.** A new section is added to chapter 25.15 RCW under "ARTICLE XI. MERGERS" to read as follows:

**ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED LIABILITY COMPANY.** (1) Subject to section 6 of this act, a plan of conversion must be consented to by all the members of a converting limited liability company.

(2) Subject to section 6 of this act and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 4 of this act, a converting limited liability company may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same approval as was required to approve the plan.

**NEW SECTION. Sec. 4.** A new section is added to chapter 25.15 RCW under "ARTICLE XI. MERGERS" to read as follows:

**FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.** (1) After a plan of conversion is approved, the converting organization must make one of the following filings to complete the conversion:

(a) A converting limited liability company must deliver to the secretary of state for filing articles of conversion, which must include:

(i) A statement that the limited liability company has been converted into another organization;

(ii) The name and form of the converted organization and the jurisdiction of its governing statute;

(iii) The date the conversion is effective under the governing statute of the converted organization;

(iv) A statement that the conversion was approved as required by this chapter;

(v) A statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of section 5(3) of this act; or

(b) A converting organization that is not a limited liability company must deliver to the secretary of state for filing a certificate of formation, together with articles of conversion, which must include:

(i) A statement that the limited liability company was converted from another organization;

(ii) The name and form of the converting organization and the jurisdiction of its governing statute; and

(iii) A statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(2) The effective time of a conversion is either:

(a) If the converted organization is a limited liability company, when the certificate of formation takes effect; or

(b) If the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

(3) If the certificate of formation filed pursuant to this section does not specify a delayed effective date, it becomes effective upon filing. If the certificate of formation specifies a delayed effective time and date, the certificate of formation becomes effective at the time and date specified. If the certificate of formation specifies a delayed effective date but no time is specified, the certificate of formation is effective at the close of business on that date. A delayed effective date for a certificate of formation may not be later than the ninetieth day after the date it is filed.

**NEW SECTION. Sec. 5.** A new section is added to chapter 25.15 RCW under "ARTICLE XI. MERGERS" to read as follows:

**EFFECT OF CONVERSION.** (1) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) The title to all real estate and other property owned by the converting organization remains vested in the converted organization without reversion or impairment;

(b) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of Article VIII of this chapter.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company if before the conversion the converting limited liability company was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in RCW 25.15.025(3).

**NEW SECTION. Sec. 6.** A new section is added to chapter 25.15 RCW under "ARTICLE XI. MERGERS" to read as follows:

**RESTRICTIONS ON APPROVAL OF CONVERSIONS.** If a member of a converting limited liability company will have personal liability with respect to a converted organization, then, in addition to the approval requirements in section 3(1) of this act, approval of a plan of conversion must also require the signing, by each such member, of a separate written consent to become subject to such personal liability.

**Sec. 7.** RCW 25.15.085 and 2010 c 196 s 3 are each amended to read as follows:

(1) Each document required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner, or in compliance with the rules established to facilitate electronic filing under RCW 25.15.007, except as set forth in RCW 25.15.105(4)(b):

(a) Each original certificate of formation must be signed by the person or persons forming the limited liability company;

(b) A reservation of name may be signed by any person;

(c) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;

(d) A registration of name must be signed by any member or manager of the foreign limited liability company;

(e) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;



(f) A certificate of dissolution must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to RCW 25.15.295(3);

(g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; ~~((and))~~

(h) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be signed by any member or manager of the foreign limited liability company; and

(i) If a converting limited liability company is filing articles of conversion, the articles of conversion must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members.

(2) Any person may sign a certificate, articles of merger, articles of conversion, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate ~~((or))~~, articles of merger, or articles of conversion by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

NEW SECTION. Sec. 8. A new section is added to chapter 23B.09 RCW to read as follows:

DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Converting entity" means the domestic corporation that adopts a plan of entity conversion or the other entity converting to a domestic corporation.

(2) "Domestic other entity" means an other entity organized under the laws of this state.

(3) "Foreign other entity" means an other entity organized under a law other than the laws of this state.

(4) "Interest holder" means a person who holds of record:

(a) A right to receive distributions from an other entity either in the ordinary course of business or upon liquidation, other than as an assignee; or

(b) A right to vote on issues involving an other entity's internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(5) "Interests" means the interests in an other entity held by its interest holders.

(6) "Organic document" means a public organic document or a private organic document.

(7) "Organic law" means the statute governing the internal affairs of a domestic corporation or other entity.

(8) "Other entity" means any association or entity other than a domestic corporation, a domestic or foreign nonprofit corporation, a domestic or foreign mutual corporation or miscellaneous corporation, or a governmental or quasi-governmental organization. The term includes, but is not limited to, foreign corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, and profit unincorporated associations.

(9) "Owner liability" means personal liability for a debt, obligation, or liability of an entity that is imposed on a person:

(a) Solely by reason of the person's status as a shareholder or interest holder; or

(b) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(10) "Private organic document" means any document, other than the public organic document, if any, that determines the internal governance of an other entity.

(11) "Public organic document" means the document, if any, that is filed of public record to create an other entity, including amendments and restatements thereof.

(12) "Surviving entity" means the domestic corporation or other entity that is in existence immediately after consummation of an entity conversion pursuant to this chapter.

**NEW SECTION. Sec. 9.** A new section is added to chapter 23B.09 RCW to read as follows:

**ENTITY CONVERSION.** (1) A domestic corporation may become an other entity pursuant to a plan of entity conversion if the entity conversion is permitted by the organic law of the other entity by:

- (a) Complying with section 11 of this act; and
- (b) Filing articles of entity conversion with the secretary of state.

(2) An other entity may become a domestic corporation if the entity conversion is permitted by the organic law of the other entity by:

- (a) Complying with the procedures for the approval of an entity conversion provided in the organic law of the other entity; and
- (b) Filing articles of entity conversion with the secretary of state.

**NEW SECTION. Sec. 10.** A new section is added to chapter 23B.09 RCW to read as follows:

**PLAN OF ENTITY CONVERSION.** A plan of entity conversion must be in a record and must include:

- (1) The name of the domestic corporation before conversion;
- (2) The name and form of the surviving entity after conversion;

(3) The terms and conditions of the conversion, including the manner and basis for converting interests in the domestic corporation into any combination of the interests, shares, obligations, or other securities of the surviving entity or any other entity or into cash or other property in whole or part; and

(4) The organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.

**NEW SECTION. Sec. 11.** A new section is added to chapter 23B.09 RCW to read as follows:

**APPROVAL OF A PLAN OF ENTITY CONVERSION.** In the case of an entity conversion of a domestic corporation to an other entity:

(1) The plan of entity conversion must be adopted by the board of directors of the converting entity and the shareholders entitled to vote must approve the plan.

(2) After adopting a plan of entity conversion, the board of directors of the converting entity must submit the plan of entity conversion for approval by its shareholders.

(3) The board of directors must recommend the plan of entity conversion to the shareholders, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or (b) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders.

(4) The board of directors may condition its submission of the plan of entity conversion on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate voting group on the plan of entity conversion.

(5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by the board of directors acting pursuant to subsection (4) of this section, approval of the plan of entity conversion requires the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.030, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on a plan of merger. Separate voting by additional voting groups is required on a plan of entity conversion if such voting group or groups would be entitled to vote on a plan of merger under the circumstances described in RCW 23B.11.035. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on the plan.

(6) In the case of an entity conversion of a domestic corporation to an other entity that is not a foreign corporation, approval of the plan of entity conversion requires the approval of all shareholders of the domestic corporation, whether or not entitled to vote under this title or the articles of incorporation.

(7) If as a result of the conversion one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, in addition to the approval requirements under subsections (5) and (6) of this section, approval of the plan

of entity conversion must also require each such shareholder to execute a separate record consenting to become subject to such owner liability.

(8) If the approval of the shareholders is to be given at a meeting, the domestic corporation must notify each shareholder, whether or not entitled to vote, of the proposed meeting of shareholders at which the plan of entity conversion is to be submitted for approval in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of entity conversion and must contain or be accompanied by a copy or summary of the plan of entity conversion. The notice must include or be accompanied by a copy of the organic documents of the surviving entity as they will be in effect immediately after the conversion.

(9) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders of the domestic corporation are parties, adopted, or entered into before the effective date of this section applies to a merger of the domestic corporation, other than a provision that limits or eliminates voting or dissenters' rights, and the document does not refer to an entity conversion of the domestic corporation, the provision is deemed to apply to an entity conversion of the domestic corporation until the provision is subsequently amended.

NEW SECTION. Sec. 12. A new section is added to chapter 23B.09 RCW to read as follows:

**ARTICLES OF ENTITY CONVERSION.** (1) After a plan of entity conversion by a domestic corporation converting into an other entity has been adopted and approved as required by this chapter, articles of entity conversion must be signed on behalf of the domestic corporation by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.

(2) After the conversion of an other entity into a domestic corporation has been adopted and approved as required by the organic law of the converting entity, articles of entity conversion must be signed on behalf of the converting entity by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.

(3) The articles of entity conversion must set forth:

(a) A statement that the converting entity has been converted into the surviving entity;

(b) The name and form of the converting entity before conversion;

(c) The name and form of the surviving entity after conversion, which must be a name that satisfies the requirements of RCW 23B.04.010 if the surviving entity after conversion is a domestic corporation;

(d) Articles of incorporation that comply with RCW 23B.02.020 if the surviving entity after conversion is a domestic corporation;

(e) The date the conversion is effective under the organic law of the surviving entity;

(f) If the converting entity is a domestic corporation, a statement that the conversion was duly approved by the shareholders of the domestic corporation pursuant to section 11 of this act;

(g) If the converting entity is an other entity, a statement that the conversion was duly approved as required by the organic law of the converting entity; and

(h) If the surviving entity is a foreign other entity not authorized to transact business in this state: (i) A statement that the surviving entity appoints the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation; and (ii) the street and mailing address of an office which the secretary of state may use for the purposes of RCW 23B.15.100.

(4) The articles of entity conversion take effect at the effective time provided in RCW 23B.01.230. Articles of entity conversion under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the other entity if the combined filing satisfies the requirements of both this section and the organic law of the other entity.

NEW SECTION. Sec. 13. A new section is added to chapter 23B.09 RCW to read as follows:

**EFFECT OF ENTITY CONVERSION.** (1) An entity that has been converted pursuant to this chapter is, for all purposes of the laws of the state of Washington, deemed to be the same entity that existed before the conversion and, unless otherwise agreed or as required under applicable non-Washington law, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion is not deemed to constitute a dissolution of the converting entity.

(2) When any conversion becomes effective under this chapter:

(a) The title to all real estate and other property, both tangible and intangible, owned by the converting entity remains vested in the surviving entity without reversion or impairment;

(b) All rights of creditors and all liens upon any property of the converting entity must be preserved unimpaired, and all debts, liabilities, and other obligations of the converting entity continue as obligations of the surviving entity, remain attached to the surviving entity, and may be enforced against it to the same extent as if the debts, liabilities, and other obligations had originally been incurred or contracted by it in its capacity as the surviving entity;

(c) An action or proceeding pending by or against the converting entity may be continued by or against the surviving entity as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the surviving entity; and

(e) Except as otherwise provided in the plan of entity conversion, the terms and conditions of the plan of entity conversion take effect.

(3) When a conversion of a domestic corporation to a foreign other entity becomes effective, the surviving entity is deemed:

(a) To consent to the jurisdiction of the courts of this state to enforce any obligation owed by the converting entity, if before the conversion the converting entity was subject to suit in this state on the obligation;

(b) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation in connection with the conversion; and

(c) To agree that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they are entitled under chapter 23B.13 RCW.

(4) Service of process on the secretary of state under this section is made in the same manner and with the same consequences as in RCW 23B.15.100.

**NEW SECTION. Sec. 14.** A new section is added to chapter 23B.09 RCW to read as follows:

**ABANDONMENT OF ENTITY CONVERSION.** (1) Unless otherwise provided in a plan of entity conversion of a domestic corporation, after the plan of entity conversion has been adopted and approved as required by this chapter, and at any time before the articles of entity conversion have become effective, the planned conversion may be abandoned by the board of directors without action by the shareholders.

(2) If any entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is deemed abandoned and may not become effective.

**Sec. 15.** RCW 23B.13.020 and 2013 c 97 s 1 are each amended to read as follows:

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;

(e) Any action described in RCW 23B.25.120; ((c))

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of

directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(g) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation, which has become effective, to which the domestic corporation is a party as the converting entity, if: (i) The shareholder was entitled to vote on the plan; and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

- (a) The proposed corporate action is abandoned or rescinded;
- (b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or
- (c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

Passed by the Senate February 10, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 84

[Engrossed Substitute Senate Bill 6016]

### HEALTH BENEFIT EXCHANGE—ENROLLEES—GRACE PERIOD

AN ACT Relating to the grace period for enrollees of the Washington health benefit exchange; amending RCW 48.43.—; adding a new section to chapter 43.71 RCW; adding a new section to chapter 48.43 RCW; and providing a contingent effective date.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 43.71 RCW to read as follows:

(1) The exchange must support the grace period by providing electronic information to an issuer of a qualified health plan or a qualified dental plan that complies with 45 C.F.R. Sec. 156.270 (2013) and 45 C.F.R. Sec. 155.430 (2013).

(2) If the health benefit exchange notifies an enrollee that he or she is delinquent on payment of premium, the notice must include information on how to report a change in income or circumstances and an explanation that such a report may result in a change in the premium amount or program eligibility.

**NEW SECTION. Sec. 2.** A new section is added to chapter 48.43 RCW to read as follows:

(1) For an enrollee who is in the second or third month of the grace period, an issuer of a qualified health plan shall:

(a) Upon request by a health care provider or health care facility, provide information regarding the enrollee's eligibility status in real-time; and

(b) Notify a health care provider or health care facility that an enrollee is in the grace period within three business days after submittal of a claim or status request for services provided.

(2) The information or notification required under subsection (1) of this section must, at a minimum, indicate "grace period" or use the appropriate national coding standard as the reason for pending the claim if a claim is pended due to the enrollee's grace period status.

(3) By December 1, 2014, and annually each December 1st thereafter, the health benefit exchange shall provide a report to the appropriate committees of the legislature with the following information for the calendar year: (a) The number of exchange enrollees who entered the grace period; (b) the number of enrollees who subsequently paid premium after entering the grace period; (c) the average number of days enrollees were in the grace period prior to paying premium; and (d) the number of enrollees who were in the grace period and whose coverage was terminated due to nonpayment of premium. The report must include as much data as is available for the calendar year.

(4) For purposes of this section, "grace period" means nonpayment of premiums by an enrollee receiving advance payments of the premium tax credit, as defined in section 1412 of the patient protection and affordable care act, P.L. 111-148, as amended by the health care and education reconciliation act, P.L. 111-152, and implementing regulations issued by the federal department of health and human services.

**Sec. 3.** RCW 48.43.— and 2014 c . . . s 2 (section 2 of this act) are each amended to read as follows:

(1) For an enrollee who is in the second or third month of the grace period, an issuer of a qualified health plan shall:

(a) Upon request by a health care provider or health care facility, provide information regarding the enrollee's eligibility status in real-time; and

(b) Notify a health care provider or health care facility that an enrollee is in the grace period within three business days after submittal of a claim or status request for services provided.

(2) The information or notification required under subsection (1) of this section must, at a minimum(~~(c)~~):

(a) Indicate "grace period" or use the appropriate national coding standard as the reason for pending the claim if a claim is pended due to the enrollee's grace period status; and

(b) Except for notifications provided electronically, indicate that enrollee is in the second or third month of the grace period.

(3) By December 1, 2014, and annually each December 1st thereafter, the health benefit exchange shall provide a report to the appropriate committees of the legislature with the following information for the calendar year: (a) The number of exchange enrollees who entered the grace period; (b) the number of enrollees who subsequently paid premium after entering the grace period; (c) the average number of days enrollees were in the grace period prior to paying premium; and (d) the number of enrollees who were in the grace period and



whose coverage was terminated due to nonpayment of premium. The report must include as much data as is available for the calendar year.

(4) For purposes of this section, "grace period" means nonpayment of premiums by an enrollee receiving advance payments of the premium tax credit, as defined in section 1412 of the patient protection and affordable care act, P.L. 111-148, as amended by the health care and education reconciliation act, P.L. 111-152, and implementing regulations issued by the federal department of health and human services.

**NEW SECTION. Sec. 4.** Section 3 of this act takes effect January 1st following the issuance of a report under section 2(3) of this act indicating that coverage was terminated due to nonpayment of premium for ten thousand or more enrollees who were in the grace period in that calendar year. In no case may section 3 of this act take effect before January 1, 2015. The health benefit exchange must provide notice of the effective date of section 3 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the health benefit exchange.

Passed by the Senate March 10, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 85

[Engrossed Senate Bill 6031]

### LAKE AND BEACH MANAGEMENT DISTRICTS

AN ACT Relating to lake and beach management districts; amending RCW 36.61.010, 36.61.020, 36.61.070, 36.61.220, 36.61.250, 36.61.260, 36.61.030, and 36.61.170; and adding new sections to chapter 36.61 RCW.

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

**Sec. 1.** RCW 36.61.010 and 2008 c 301 s 1 are each amended to read as follows:

(1) The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by eutrophication and other deterioration and that existing governmental authorities are unable to adequately improve and maintain the quality of the state's lakes.

(2) The legislature intends that an ecosystem-based beach management approach should be used to help promote the health of aquatic ecosystems and that such a management approach be undertaken in a manner that retains ecosystem values within the state. This management approach should use long-term strategies that focus on reducing nutrient inputs from human activities affecting the aquatic ecosystem, such as decreasing nutrients into storm water sewers, decreasing fertilizer application, promoting the proper disposal of pet waste, promoting the use of vegetative borders, promoting the reduction of nutrients from on-site septic systems where appropriate, and protecting riparian areas. Organic debris, including vegetation, driftwood, seaweed, kelp, and organisms, are extremely important to beach ecosystems.

(3) The legislature further finds that it is in the public interest to promote the conservation and stewardship of shorelines and upland properties adjoining lakes and beaches in order to: (a) Conserve natural or scenic resources; (b) protect riparian habitats and water quality; (c) promote conservation of soils, wetlands, shorelines, or tidal marshes; (d) enhance the value of lakes or beaches to the public as well as the benefit of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space; (e) enhance recreation opportunities; (f) preserve historic sites; and (g) protect visual quality along highway, road, street, trail, recreational, and other corridors or scenic vistas.

(4) It is the purpose of this chapter to establish a governmental mechanism by which property owners can embark on a program of lake or beach improvement and maintenance for their and the general public's benefit, health, and welfare. Public property, including state property, shall be considered the same as private property in this chapter, except liens for special assessments and liens for rates and charges shall not extend to public property. Lake bottom property and marine property below the line of the ordinary high water mark shall not be considered to be benefitted, shall not be subject to special assessments or rates and charges, and shall not receive voting rights under this chapter.

**Sec. 2.** RCW 36.61.020 and 2008 c 301 s 3 are each amended to read as follows:

(1) Any county may create lake or beach management districts to finance: (a) The improvement and maintenance of lakes or beaches located within or partially within the boundaries of the county; and (b) the acquisition of real property or property rights within or outside a lake or beach management district including, by way of example, conservation easements authorized under RCW 64.04.130, and to promote the conservation and stewardship of shorelines as well as the conservation and stewardship of upland properties adjoining lakes or beaches for conservation or for minimal development. All or a portion of a lake or beach and the adjacent land areas may be included within one or more lake or beach management districts. More than one lake or beach, or portions of lakes or beaches, and the adjacent land areas may be included in a single lake or beach management district.

(2) For the purposes of this chapter, the term "improvement" includes, among other things, the acquisition of real property and property rights within or outside a lake or beach management district for the purposes set forth in RCW 36.61.010 and this section.

(3) Special assessments or rates and charges may be imposed on the property included within a lake or beach management district to finance lake or beach improvement and maintenance activities, including: ~~((1))~~ (a) Controlling or removing aquatic plants and vegetation; ~~((2))~~ (b) improving water quality; ~~((3))~~ (c) controlling water levels; ~~((4))~~ (d) treating and diverting storm water; ~~((5))~~ (e) controlling agricultural waste; ~~((6))~~ (f) studying lake or marine water quality problems and solutions; ~~((7))~~ (g) cleaning and maintaining ditches and streams entering the lake or marine waters or leaving the lake; ~~((8))~~ (h) monitoring air quality; (i) the acquisition of real property and property rights; and ~~((9))~~ (j) the related administrative,

engineering, legal, and operational costs, including the costs of creating the lake or beach management district.

(4) Special assessments or rates and charges may be imposed annually on all the land in a lake or beach management district for the duration of the lake or beach management district without a related issuance of lake or beach management district bonds or revenue bonds. Special assessments also may be imposed in the manner of special assessments in a local improvement district with each landowner being given the choice of paying the entire special assessment in one payment, or to paying installments, with lake or beach management district bonds being issued to obtain moneys not derived by the initial full payment of the special assessments, and the installments covering all of the costs related to issuing, selling, and redeeming the lake or beach management district bonds.

**NEW SECTION. Sec. 3.** A new section is added to chapter 36.61 RCW to read as follows:

A proposal to acquire real property or property rights within or outside of a lake or beach management district in accordance with RCW 36.61.020 is subject to the following limitations and requirements: (1) The real property or property rights proposed for acquisition must be in a county located west of the crest of the Cascade mountain range that plans under RCW 36.70A.040 and has a population of more than forty thousand and fewer than sixty-five thousand persons as of April 1, 2013, as determined by the office of financial management; and (2) prior to the acquisition of real property or property rights, the proposal must have the written approval of a majority of the property owners of the district, as determined by the tax rolls of the county assessor.

**Sec. 4.** RCW 36.61.070 and 2008 c 301 s 9 are each amended to read as follows:

(1) After the public hearing, the county legislative authority may adopt a resolution submitting the question of creating the lake or beach management district to the owners of land within the proposed lake or beach management district, including publicly owned land, if the county legislative authority finds that it is in the public interest to create the lake or beach management district and the financing of the lake or beach improvement and maintenance activities is feasible. The resolution shall also include: ~~((4))~~ (a) A plan describing the proposed lake or beach improvement and maintenance activities which avoid adverse impacts on fish and wildlife and provide for appropriate measures to protect and enhance fish and wildlife; ~~((2))~~ (b) the number of years the lake or beach management district will exist; ~~((3))~~ (c) the amount to be raised by special assessments or rates and charges; ~~((4))~~ (d) if special assessments are to be imposed, whether the special assessments shall be imposed annually for the duration of the lake or beach management district or only once with the possibility of installments being imposed and lake or beach management bonds being issued, or both, and, if both types of special assessments are proposed to be imposed, the lake or beach improvement or maintenance activities proposed to be financed by each type of special assessment; ~~((5))~~ (e) if rates and charges are to be imposed, a description of the proposed rates and charges and the possibility of revenue bonds being issued that are payable from the rates and charges; and ~~((6))~~ (f) the estimated special assessment or rate and charge

proposed to be imposed on each parcel included in the proposed lake or beach management district.

(2) No lake or beach management district may be created by a county that includes territory located in another county without the approval of the legislative authority of the other county.

**Sec. 5.** RCW 36.61.220 and 2008 c 301 s 21 are each amended to read as follows:

Within (~~fifteen~~) thirty days after a county creates a lake or beach management district, the county shall cause to be filed with the county treasurer, a description of the lake or beach improvement and maintenance activities proposed that the lake or beach management district finances, the lake or beach management district number, and a copy of the diagram or print showing the boundaries of the lake or beach management district and preliminary special assessment roll or abstract of the same showing thereon the lots, tracts, parcels of land, and other property that will be specially benefitted thereby and the estimated cost and expense of such lake or beach improvement and maintenance activities to be borne by each lot, tract, parcel of land, or other property. The treasurer shall immediately post the proposed special assessment roll upon his or her index of special assessments against the properties affected by the lake or beach improvement or maintenance activities.

**Sec. 6.** RCW 36.61.250 and 1985 c 398 s 25 are each amended to read as follows:

Except when lake or beach management district bonds are outstanding or when an existing contract might otherwise be impaired, the county legislative authority may stop the imposition of annual special assessments if, in its opinion, the public interest will be served by such action.

**Sec. 7.** RCW 36.61.260 and 2008 c 301 s 23 are each amended to read as follows:

(1) Counties may issue lake or beach management district revenue bonds in accordance with this section. Lake or beach management district bonds may be issued to obtain money sufficient to cover that portion of the special assessments that are not paid within the thirty-day period provided in RCW 36.61.190.

(2) Whenever lake or beach management district revenue bonds are proposed to be issued, the county legislative authority shall create a special fund or funds for the lake or beach management district from which all or a portion of the costs of the lake or beach improvement and maintenance activities shall be paid. Lake or beach management district bonds shall not be issued in excess of the costs and expenses of the lake or beach improvement and maintenance activities and shall not be issued prior to twenty days after the thirty days allowed for the payment of special assessments without interest or penalties.

(3) Lake or beach management district revenue bonds shall be exclusively payable from the special fund or funds and from a guaranty fund that the county may have created out of a portion of proceeds from the sale of the lake or beach management district bonds.

~~((2))~~ (4)(a) Lake or beach management district revenue bonds shall not constitute a general indebtedness of the county issuing the bond nor an obligation, general or special, of the state. The owner of any lake or beach management district revenue bond shall not have any claim for the payment

thereof against the county that issues the bonds except for: (i) With respect to revenue bonds payable from special assessments, payment from the special assessments made for the lake or beach improvement or maintenance activities for which the lake or beach management district bond was issued and from the special fund or funds, and a lake or beach management district guaranty fund, that may have been created; and (ii) with respect to revenue bonds payable from rates and charges, payment from rates and charges deposited in the special fund or funds that the county may have created for that purpose. Revenue bonds may be payable from both special assessments and from rates and charges. The county shall not be liable to the owner of any lake or beach management district bond for any loss to ~~(the)~~ a lake or beach management district guaranty fund occurring in the lawful operation of the fund. The owner of a lake or beach management district bond shall not have any claim against the state arising from the lake or beach management district bond, rates and charges, special assessments, or guaranty fund. Tax revenues shall not be used to secure or guarantee the payment of the principal of or interest on lake or beach management district bonds. Notwithstanding the provisions of this subsection, nothing in this section may be interpreted as limiting a county's issuance of bonds pursuant to RCW 36.67.010 in order to assist in the financing of improvements to lakes or beaches located within or partially within the boundaries of the county, including without limitation lakes or beaches located within a lake or beach management district.

(b) The substance of the limitations included in this subsection (4) shall be plainly printed, written, engraved, or reproduced on: ~~((a))~~ (i) Each lake or beach management district bond that is a physical instrument; ~~((b))~~ (ii) the official notice of sale; and ~~((c))~~ (iii) each official statement associated with the lake or beach management district bonds.

~~((3))~~ (5) If the county fails to make any principal or interest payments on any lake or beach management district bond or to promptly collect any special assessment securing ~~(the)~~ lake or beach management district revenue bonds when due, the owner of the lake or beach management district revenue bond may obtain a writ of mandamus from any court of competent jurisdiction requiring the county to collect the special assessments, foreclose on the related lien, and make payments out of the special fund or guaranty fund if one exists. Any number of owners of lake or beach management districts may join as plaintiffs.

~~((4))~~ (6) A county may create a lake or beach management district bond guaranty fund for each issue of lake or beach management district bonds. The guaranty fund shall only exist for the life of the lake or beach management district bonds with which it is associated. A portion of the bond proceeds may be placed into a guaranty fund. Unused moneys remaining in the guaranty fund during the last two years of the installments shall be used to proportionally reduce the required level of installments and shall be transferred into the special fund into which installment payments are placed. A county may, in the discretion of the legislative authority of the county, deposit amounts into a lake or beach management district bond guaranty fund from any money legally available for that purpose. Any amounts remaining in the guaranty fund after the repayment of all revenue bonds secured thereby and the payment of assessment installments, may be applied to lake or beach improvement and maintenance activities or to other district purposes.

~~((5))~~ (7) Lake or beach management district bonds shall be issued and sold in accordance with chapter 39.46 RCW. The authority to create a special fund or funds shall include the authority to create accounts within a fund.

**Sec. 8.** RCW 36.61.030 and 2008 c 301 s 5 are each amended to read as follows:

A lake or beach management district may be initiated upon either the adoption of a resolution of intention by a county legislative authority or the filing of a petition signed by ten landowners or the owners of at least ~~((fifteen))~~ twenty percent of the acreage contained within the proposed lake or beach management district, whichever is greater. A petition or resolution of intention shall set forth: (1) The nature of the lake or beach improvement or maintenance activities proposed to be financed; (2) the amount of money proposed to be raised by special assessments or rates and charges; (3) if special assessments are to be imposed, whether the special assessments will be imposed annually for the duration of the lake or beach management district, or the full special assessments will be imposed at one time, with the possibility of installments being made to finance the issuance of lake or beach management district bonds, or both methods; (4) if rates and charges are to be imposed, the annual amount of revenue proposed to be collected and whether revenue bonds payable from the rates and charges are proposed to be issued; (5) the number of years proposed for the duration of the lake or beach management district; and (6) the proposed boundaries of the lake or beach management district.

The county legislative authority may require the posting of a bond of up to five thousand dollars before the county considers the proposed creation of a lake or beach management district initiated by petition. The bond may only be used by the county to finance its costs in studying, holding hearings, making notices, preparing special assessment rolls or rolls showing the rates and charges on each parcel, and conducting elections related to the lake or beach management district if the proposed lake or beach management district is not created.

A resolution of intention shall also designate the number of the proposed lake or beach management district, and fix a date, time, and place for a public hearing on the formation of the proposed lake or beach management district. The date for the public hearing shall be at least thirty days and no more than ninety days after the adoption of the resolution of intention unless an emergency exists.

Petitions shall be filed with the county legislative authority. The county legislative authority shall determine the sufficiency of the signatures, which shall be conclusive upon all persons. No person may withdraw his or her name from a petition after it is filed. If the county legislative authority determines a petition to be sufficient and the proposed lake or beach management district appears to be in the public interest and the financing of the lake or beach improvement or maintenance activities is feasible, it shall adopt a resolution of intention, setting forth all of the details required to be included when a resolution of intention is initiated by the county legislative authority.

**NEW SECTION. Sec. 9.** A new section is added to chapter 36.61 RCW to read as follows:

(1) In connection with the acquisition of real property or property rights within or outside a lake or beach management district, a county may: (a) Own

real property and property rights, including without limitation conservation easements; (b) transfer real property and property rights to another state or local governmental entity; (c) contract with a public or private entity, including without limitation a financial institution with trust powers, a municipal corporation, or a nonprofit corporation, to hold real property or property rights such as conservation easements in trust for the purposes of the lake and beach management district, and, in connection with those services, to pay the reasonable costs of that financial institution or nonprofit corporation; (d) monitor and enforce the terms of a real property right such as a conservation easement, or for that purpose to contract with a public or private entity, including without limitation a financial institution with trust powers, a municipal corporation, or a nonprofit corporation; (e) impose terms, conditions, and encumbrances upon real property or property rights acquired in respect of a lake or beach management district, and amend the same; and (f) accept gifts, grants, and loans in connection with the acquisition of real property and property rights for lake or beach management district purposes.

(2) If a county contracts with a financial institution, municipal corporation, or nonprofit corporation to hold that property or property rights in trust for purposes of the district, the terms of the contract must provide that the financial institution, municipal corporation, or nonprofit corporation may not sell, pledge, or hypothecate the property or property rights for any purpose, and must further provide for the return of the property or property rights back to the county in the event of a material breach of the terms of the contract.

(3) Before a lake or beach management district in existence as of the effective date of this section exercises the powers set forth in this section, the legislative authority of the county must provide for an amended resolution of intention and modify the plan for the district, with a public hearing, all as provided in RCW 36.61.050.

**Sec. 10.** RCW 36.61.170 and 2008 c 301 s 18 are each amended to read as follows:

(1) The total annual special assessments may not exceed the estimated cost of the lake or beach improvement or maintenance activities proposed to be financed by such special assessments, as specified in the resolution of intention. The total of special assessments imposed in a lake or beach management district that are of the nature of special assessments imposed in a local improvement district shall not exceed one hundred fifty percent of the estimated total cost of the lake or beach improvement or maintenance activities that are proposed to be financed by the lake or beach management district as specified in the resolution of intention.

(2) After a lake or beach management district has been created, the resolution of intention may be amended to increase or otherwise modify the amount to be financed by the lake or beach management district by using the same procedure in which a lake or beach management district is created, including landowner approvals consistent with the procedures established in RCW 36.61.080 through 36.61.100.

**NEW SECTION. Sec. 11.** A new section is added to chapter 36.61 RCW to read as follows:

(1) Except when lake or beach management district bonds are outstanding or when an existing contract might otherwise be impaired, a lake or beach management district may be dissolved either by: The county legislative authority upon a finding that the purposes of the district have been accomplished; or a vote of the property owners within the district, if proposed by the legislative authority of the county or through the filing of a sufficient petition signed by the owners of at least twenty percent of the acreage within the district.

(2) If the question of dissolution of a district is submitted to property owners, the balloting is subject to the following conditions, which must be included in the instructions mailed with each ballot, as provided in RCW 36.61.080:

(a) A ballot must be mailed to each owner or reputed owner of any lot, tract, parcel of land, or other property within the district, with the ballot weighted so that a property owner has one vote for each dollar of special assessment or rates and charges imposed on his or her property;

(b) A ballot must be signed by the owner or reputed owner of property according to the assessor's tax rolls;

(c) Each ballot must be returned to the county legislative authority no later than 5:00 p.m. of a specified day, which must be at least twenty, but not more than thirty days after the ballots are mailed; and

(d) Each property owner must mark his or her ballot for or against the dissolution of the district.

(3) If, following the tabulation of the valid ballots, a simple majority of the votes cast are in favor of dissolving the district, the district must be dissolved on the date established in the ballot proposition.

(4) A county, although not separately responsible for satisfying the financial obligations of a dissolved district, has full authority to continue imposing special assessments, rates, and charges for a dissolved district until all financial obligations of the district incurred prior to its dissolution have been extinguished or retired.

Passed by the Senate March 11, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 86

[Engrossed Senate Bill 6034]

### STATE PARKS—PARTNERSHIP OPPORTUNITIES

AN ACT Relating to state parks partnership opportunities; amending RCW 79A.05.335, 79A.05.340, 79A.05.345, 79A.70.010, 79A.70.020, 79A.70.030, and 79A.70.040; and adding new sections to chapter 79A.05 RCW.

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

**Sec. 1.** RCW 79A.05.335 and 1991 c 107 s 1 are each amended to read as follows:

The legislature finds that the parks and recreation lands owned and managed by the (~~state parks and recreation~~) commission are a significant collection of valuable scenic, natural, cultural, and historical (~~and cultural~~) resources for the citizens of Washington state. The legislature further finds that if citizens



understand and appreciate the ~~((state park ecological resources, they will come to appreciate and understand the ecosystems and natural resources throughout the state))~~ scenic, natural, cultural, and historical resources present in Washington's state parks, they will be inspired to conserve this important legacy for future generations. Therefore, the ~~((state parks and recreation))~~ commission may ~~((increase the))~~ use ~~((of))~~ its facilities and resources to provide ~~((environmental))~~ scenic, natural, cultural, or historical resource interpretation throughout the state parks system.

**Sec. 2.** RCW 79A.05.340 and 1991 c 107 s 2 are each amended to read as follows:

The ~~((state parks and recreation))~~ commission may provide ~~((environmental interpretative))~~ scenic, natural, cultural, or historical resource interpretive activities for visitors to state parks that:

(1) Explain the functions, history, significance, and cultural aspects of ecosystems;

(2) Explain the relationship between human needs, human behaviors and attitudes, and the environment; ~~((and))~~

(3) Explain the diverse human heritage and cultural changes over time in Washington state;

(4) Offer experiences and information to increase citizen understanding, appreciation, and stewardship of ~~((the environment and its multiple uses))~~ their natural, cultural, ethnic, and artistic heritage; and

(5) Explain the need for natural, cultural, and historical resource protection and preservation as well as the methods by which these goals can be achieved.

**Sec. 3.** RCW 79A.05.345 and 1991 c 107 s 3 are each amended to read as follows:

The ~~((state parks and recreation))~~ commission may consult and enter into agreements with and solicit assistance from ~~((private sector organizations and other governmental agencies that are interested in conserving and interpreting Washington's environment. The commission shall not permit commercial advertising in state park lands or interpretive centers as a condition of such agreements. Logos or credit lines for sponsoring organizations may be permitted. The commission shall maintain an accounting of all monetary gifts provided, and expenditures of monetary gifts shall not be used to increase personnel))~~ other public agencies, the state parks foundation, private entities, employee business units, and tribes that are interested in stewarding and interpreting state parks scenic, natural, cultural, and recreational resources.

**NEW SECTION, Sec. 4.** A new section is added to chapter 79A.05 RCW to read as follows:

(1) The commission, in consultation with the department of archaeology and historic preservation, may permit commercial advertising on or in state parks lands and buildings when all the following conditions and standards are met with regard to the commercial advertising:

(a) It conforms to the United States secretary of the interior's standards for the treatment of historic properties when applied to advertising affecting historic structures, cultural and historic landscapes, and archaeological sites;

(b) It does not detract from the integrity of the park's natural, cultural, historic, and recreational resources and outstanding scenic view sheds;

(c) It does not create a potential conflict of interest because of the commercial or corporate entity's regulatory or business relationships with the commission; and

(d) It will acknowledge individuals and organizations that are donors or sponsors of park events or projects or support the sustainability of park concessionaires, lessees, or service providers.

(2) The commission is encouraged to use its advertising authority to promote:

(a) Community economic development near state parks;

(b) Wellness, healthy food options, healthy behaviors, and any other public health goals or principles adopted by the state; and

(c) Park visitor awareness of services and activities within and near each park.

(3) The commission shall adopt standards for advertising, naming, product placement, and other forms of commercial recognition that require the commission to define and prohibit, at minimum, the following:

(a) Obscene, indecent, or discriminatory content;

(b) Political or public issue advocacy content;

(c) Products, services, or other materials that are offensive, insulting, disparaging, or degrading; or

(d) Products, services, or messages that are contrary to the public interest, including any advertisement that encourages or depicts unsafe behaviors or encourages unsafe or prohibited recreation activities. Tobacco and cannabis must be included among the products prohibited under this subsection (3)(d).

(4) Notwithstanding subsection (1) of this section, commercial advertising, including product placement, is permitted on commission web sites, electronic social media, and printed materials within or outside of state parks.

**NEW SECTION. Sec. 5.** A new section is added to chapter 79A.05 RCW to read as follows:

(1) When entering into any agreement under RCW 79A.05.345 or otherwise involving the management of state park land or a facility by a public or private partner, the commission shall consider, when appropriate:

(a) If the entity has an adequate source of available funding to assume the financial responsibilities of the agreement;

(b) If the entity has sufficient expertise to assume the scope of responsibilities of the agreement;

(c) If the agreement results in net financial benefits to the state; and

(d) If the agreement results in advancement of the commission's public purpose.

(2) Any agreement subject to this section must include specific performance measures. The performance measures must cover, but are not limited to, the entity's ability to manage financial operating costs, to adequately perform management responsibilities, and to address and respond to public concerns. The agreement must provide that failure to meet any performance measure may lead to the termination of the contract or requirements for remedial action to be taken before the agreement may be extended.

(3) The commission's authority to enter into agreements under this section, section 4 of this act, or RCW 79A.05.345 does not include the ability to rename any state park after a corporate or commercial entity, product, or service.

**Sec. 6.** RCW 79A.70.010 and 2000 c 25 s 2 are each amended to read as follows:

The purpose of the Washington state parks (~~(gift)~~) foundation is to solicit support for the state parks system, cooperate with other organizations, and to encourage gifts to support and improve the state parks.

**Sec. 7.** RCW 79A.70.020 and 2000 c 25 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter(~~(:)~~) unless the context clearly requires otherwise.

(1) "Foundation" means the Washington state parks (~~(gift)~~) foundation(~~(:)~~) created in RCW 79A.70.030.

(2) "State parks" means that system of parks administered by the commission under this title.

(3) "Eligible grant recipients" includes any and all of the activities of the commission in carrying out the provisions of this title and friends groups or other organizations that propose projects or programs solely for the benefit of state parks.

(4) "Eligible projects" means any project, action, program, or part of any project (~~(or)~~), action, or program that serves to preserve, restore, improve, or enhance the state parks.

**Sec. 8.** RCW 79A.70.030 and 2000 c 25 s 4 are each amended to read as follows:

(1) By September 1, 2000, the commission shall file articles of incorporation in accordance with the Washington nonprofit corporation act, chapter 24.03 RCW, to establish the Washington state parks (~~(gift)~~) foundation. The foundation shall not be an agency, instrumentality, or political subdivision of the state and shall not disburse public funds.

(2) The foundation shall have a board of directors consisting of up to fifteen members, whose terms, method of appointment, and authority must be in accordance with the Washington nonprofit corporation act, chapter 24.03 RCW. (~~Initial members of the board shall be appointed by the governor and collectively have experience in business, charitable giving, outdoor recreation, and parks administration. Initial appointments shall be made by September 30, 2000. Subsequent board members shall be elected by the general membership of the foundation.~~)

(3) ~~Members of the board shall serve three-year terms, except for the initial terms, which shall be staggered by the governor to achieve a balanced mix of terms on the board. Members of the board may serve up to a maximum of three terms. At the end of a term, a member may continue to serve until a successor has been elected.)~~

**Sec. 9.** RCW 79A.70.040 and 2000 c 25 s 5 are each amended to read as follows:

(1) (~~As soon as practicable, the board of directors shall organize themselves and the foundation suitably to carry out the duties of the foundation, including achieving federal tax-exempt status.~~)

(2) The foundation shall actively solicit contributions from individuals and groups for the benefit of the state parks.

~~((3))~~ (2) The foundation shall develop criteria for guiding themselves in either the creation of an endowment, or the making of grants to eligible grant recipients and eligible projects in the state parks, or both.

~~((4))~~ (3) A competitive grant process shall be conducted at least annually by the foundation to award funds ~~((to the))~~ for the benefit of state parks. Competitive grant applications shall only be submitted to the foundation by the commission, friends groups, or other organizations with projects or programs solely for the benefit of state parks. ~~((The process shall be started as soon as practicable.))~~ Grants shall be awarded to eligible projects consistent with the criteria developed by the foundation ~~((and shall be available only for state parks use on eligible projects)).~~

Passed by the Senate March 11, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 87

[Senate Bill 6065]

### TANNING—MINORS

AN ACT Relating to protecting children under the age of eighteen from the harmful effects of exposure to ultraviolet radiation associated with tanning devices; adding a new chapter to Title 18 RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Tanning facility" means any location, place, area, structure, or business that provides persons access to any ultraviolet tanning device for a fee.

(2) "Ultraviolet tanning device" means equipment that emits electromagnetic radiation with wavelengths in the air between two hundred and four hundred nanometers used for tanning of the skin including, but not limited to, a sunlamp, tanning booth, or tanning bed. An ultraviolet tanning device does not mean a phototherapy device which may be used by or under the direct supervision of a licensed physician who is trained in the use of phototherapy devices.

**NEW SECTION. Sec. 2.** (1) Persons under eighteen years of age are prohibited from using an ultraviolet tanning device without a written prescription for ultraviolet radiation treatment from a physician licensed under chapter 18.57 or 18.71 RCW.

(2) Proof of age must be satisfied with a driver's license or other government-issued identification containing the date of birth and a photograph of the individual.

**NEW SECTION. Sec. 3.** The owner of a tanning facility that violates this chapter is liable for a civil penalty not to exceed two hundred fifty dollars per violation in addition to any other penalty established by law.

**NEW SECTION. Sec. 4.** Sections 1 through 3 of this act constitute a new chapter in Title 18 RCW.

Passed by the Senate March 11, 2014.

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## CHAPTER 88

[Substitute Senate Bill 6095]

### BACKGROUND CHECKS—PERSONS WITH ACCESS TO CHILDREN OR VULNERABLE ADULTS

AN ACT Relating to background checks for persons who will have access to children or vulnerable adults; amending RCW 43.43.842, 43.20A.710, and 74.13.700; and adding a new section to chapter 74.15 RCW.

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

**Sec. 1.** RCW 43.43.842 and 2007 c 387 s 4 are each amended to read as follows:

(1)(a) The secretary of social and health services and the secretary of health shall adopt additional requirements for the licensure or relicensure of agencies, facilities, and licensed individuals who provide care and treatment to vulnerable adults, including nursing pools registered under chapter 18.52C RCW. These additional requirements shall ensure that any person associated with a licensed agency or facility having unsupervised access with a vulnerable adult shall not be the respondent in an active protective order under RCW 74.34.130, nor have been: (i) Convicted of a crime against persons as defined in RCW 43.43.830, except as provided in this section; (ii) convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, except as provided in this section; or (iii) found in any disciplinary board final decision to have abused a vulnerable adult under RCW 43.43.830.

(b) A person associated with a licensed agency or facility who has unsupervised access with a vulnerable adult shall make the disclosures specified in RCW 43.43.834(2). The person shall make the disclosures in writing, sign, and swear to the contents under penalty of perjury. The person shall, in the disclosures, specify all crimes against children or other persons, all crimes relating to financial exploitation, and all crimes relating to drugs as defined in RCW 43.43.830, committed by the person.

(2) The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense and:

(a) The offense was simple assault, assault in the fourth degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(b) The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(c) The offense was theft in the third degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(d) The offense was theft in the second degree, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(e) The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(f) The department of social and health services reviewed the employee's otherwise disqualifying criminal history through the department of social and health services' background assessment review team process conducted in 2002, and determined that such employee could remain in a position covered by this section; or

(g) The otherwise disqualifying conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure.

The offenses set forth in (a) through ~~((e))~~ (g) of this subsection do not automatically disqualify an applicant from employment by a licensee. Nothing in this section may be construed to require the employment of any person against a licensee's judgment.

(3) In consultation with law enforcement personnel, the secretary of social and health services and the secretary of health shall investigate, or cause to be investigated, the conviction record and the protection proceeding record information under this chapter of the staff of each agency or facility under their respective jurisdictions seeking licensure or relicensure. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use the information solely for the purpose of determining eligibility for licensure or relicensure. Criminal justice agencies shall provide the secretaries such information as they may have and that the secretaries may require for such purpose.

**Sec. 2.** RCW 43.20A.710 and 2012 c 164 s 505 are each amended to read as follows:

(1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers who are paid by the state and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The secretary shall require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation as provided in RCW 43.43.837. Unless otherwise authorized by law, the secretary shall use the information solely for the purpose of determining the character, suitability, and competence of the applicant.

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede RCW 74.15.030(2)(b).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 7, 2012, are subject to background checks under RCW 74.39A.056, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

(8) Any person whose criminal history would otherwise disqualify the person under this section from a position which will or may have unsupervised access to children, vulnerable adults, or persons with mental illness or developmental disabilities shall not be disqualified if the department of social and health services reviewed the person's otherwise disqualifying criminal history through the department of social and health services' background

assessment review team process conducted in 2002 and determined that such person could remain in a position covered by this section, or if the otherwise disqualifying conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure.

**NEW SECTION. Sec. 3.** A new section is added to chapter 74.15 RCW to read as follows:

If an agency operating under contract with the children's administration chooses to hire an individual that would be precluded from employment with the department based on a disqualifying crime or negative action, the department and its officers and employees have no liability arising from any injury or harm to a child or other department client that is attributable to such individual.

**Sec. 4.** RCW 74.13.700 and 2013 c 162 s 2 are each amended to read as follows:

(1) In determining the character, suitability, and competence of an individual, the department may not:

(a) Deny or delay a license or approval of unsupervised access to children to an individual solely because of a crime or civil infraction involving the individual or entity revealed in the background check process that (~~is not on the secretary's list of crimes and negative actions and is not related~~) does not fall within the categories of disqualifying crimes described in the adoption and safe families act of 1997 or does not relate directly to child safety, permanence, or well-being; or

(b) Delay the issuance of a license or approval of unsupervised access to children by requiring the individual to obtain records relating to a crime or civil infraction revealed in the background check process that (~~is not on the secretary's list of crimes and negative actions and is not related~~) does not fall within the categories of disqualifying crimes described in the adoption and safe families act of 1997 or does not relate directly to child safety, permanence, or well-being (~~and is not a permanent disqualifier pursuant to department rule~~).

(2) If the department determines that an individual does not possess the character, suitability, or competence to provide care or have unsupervised access to a child, it must provide the reasons for its decision in writing with copies of the records or documents related to its decision to the individual within ten days of making the decision.

(3) For purposes of this section, "individual" means a relative as defined in RCW 74.15.020(2)(a), an "other suitable person" under chapter 13.34 RCW, a person pursuing licensing as a foster parent, or a person employed or seeking employment by a business or organization licensed by the department or with whom the department has a contract to provide care, supervision, case management, or treatment of children in the care of the department. "Individual" does not include long-term care workers defined in RCW 74.39A.009(17)(a) whose background checks are conducted as provided in RCW 74.39A.056.

(4) The department or its officers, agents, or employees may not be held civilly liable based upon its decision to grant or deny unsupervised access to children if the background information it relied upon at the time the decision was made did not indicate that child safety, permanence, or well-being would be a concern.



Passed by the Senate March 10, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 27, 2014.

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## CHAPTER 89

[Substitute Senate Bill 6124]

### STATE ALZHEIMER'S PLAN

AN ACT Relating to developing a state Alzheimer's plan; creating new sections; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** The department of social and health services must convene an Alzheimer's disease working group to develop a state Alzheimer's plan that consists of the following members to be appointed by the department unless indicated otherwise:

(1) At least one unpaid family caregiver of a person who has been diagnosed with Alzheimer's disease;

(2) At least one professional caregiver of a person who has been diagnosed with Alzheimer's disease;

(3) At least one individual provider caregiver of a person who has been diagnosed with Alzheimer's disease;

(4) At least one person who has been diagnosed with Alzheimer's disease;

(5) A representative of nursing homes;

(6) A representative of assisted living facilities;

(7) A representative of adult family homes;

(8) A representative of home care agencies that care for people with Alzheimer's disease;

(9) A representative of adult day services;

(10) A health care professional who treats people with Alzheimer's disease;

(11) A psychologist who specializes in dementia care;

(12) A person who conducts research on Alzheimer's disease;

(13) A representative of the Alzheimer's association;

(14) A representative of the Alzheimer society of Washington;

(15) The governor or the governor's designee;

(16) The secretary of the department of social and health services or the secretary's designee;

(17) The secretary of the department of health or the secretary's designee;

(18) The director of the health care authority or the director's designee;

(19) The long-term care ombuds or the ombuds' designee;

(20) A member of the senate health care committee, appointed by the senate;

(21) A member of the house of representatives health care and wellness committee, appointed by the house of representatives;

(22) Five health policy advocates including representatives of the American association of retired persons, area agencies on aging, elder care alliance, and other advocates of the elderly or long-term care workers;

(23) A representative of the University of Washington's Alzheimer's disease research center;

(24) A member with experience in elder law or guardianship issues; and

(25) A representative from the Washington state department of veterans affairs.

**NEW SECTION. Sec. 2.** The Alzheimer's disease working group established in section 1 of this act must examine the array of needs of individuals diagnosed with Alzheimer's disease, services available to meet these needs, and the capacity of the state and current providers to meet these and future needs. The working group must consider and make recommendations and findings on the following:

(1) Trends in the state's Alzheimer's population and service needs including, but not limited to:

(a) The state's role in long-term care, family caregiver support, and assistance to persons with early-stage and early-onset of Alzheimer's disease;

(b) State policy regarding persons with Alzheimer's disease and dementia; and

(c) Estimates of the number of persons in the state who currently have Alzheimer's disease and the current and future impacts of this disease in Washington;

(2) Existing resources, services, and capacity including, but not limited to:

(a) Type, cost, and availability of dementia services;

(b) Dementia-specific training requirements for long-term care staff providing care to persons with Alzheimer's disease at all stages of the disease;

(c) Quality care measures for assisted living facilities, adult family homes, and nursing homes;

(d) Availability of home and community-based resources for persons with Alzheimer's disease, including respite care;

(e) Number and availability of long-term dementia units;

(f) Adequacy and appropriateness of geriatric psychiatric units for persons with behavior disorders associated with Alzheimer's disease and related dementia;

(g) Assisted living residential options for persons with dementia; and

(h) State support of Alzheimer's research through the Alzheimer's disease research center at the University of Washington; and

(3) Needed policies or responses including, but not limited to, the promotion of early detection and diagnosis of Alzheimer's disease and dementia, the provision of coordinated services and supports to persons and families living with Alzheimer's disease or dementia disorders, the capacity to meet these needs, and strategies to address identified gaps in services.

**NEW SECTION. Sec. 3.** (1) The secretary of the department of social and health services or the secretary's designee must convene the first meeting and must serve as chair of the Alzheimer's disease working group. Meetings of the working group must be open to the public.

(2) The department of social and health services must submit a report providing the findings and recommendations of the Alzheimer's disease working group, including any draft legislation necessary to implement the recommendations, to the governor and the health care committees of the senate and the house of representatives by January 1, 2016.

**NEW SECTION. Sec. 4.** This act expires January 31, 2016.

Passed by the Senate February 14, 2014.  
Passed by the House March 6, 2014.  
Approved by the Governor March 27, 2014.  
Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 90

[Substitute Senate Bill 6199]

### WILDFIRES—INCENDIARY DEVICES

AN ACT Relating to addressing wildfires caused by incendiary devices; amending RCW 76.04.005 and 76.04.455; and prescribing penalties.

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

**Sec. 1.** RCW 76.04.005 and 2007 c 480 s 12 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) "Additional fire hazard" means a condition existing on any land in the state:

(a) Covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property; or

(b) When, due to the effects of disturbance agents, broken, down, dead, or dying trees exist on forest land in sufficient quantity to be likely to further the spread of fire within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under RCW 76.06.180. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15<sup>th</sup> and October 15<sup>th</sup>, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(5) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, wind storms, ice storms, and fires.

(6) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(7) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

(8) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(9) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the

department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forest lands when such areas are adjacent to or intermingled with areas supporting tree growth. Forest land, for protection purposes, does not include structures.

(10) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

(11) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(12) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(13) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW 76.04.610.

(14) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forest land as a result of a landowner operation.

(15) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(16) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(17) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property.

(18) "Exploding target" means a device that is designed or marketed to ignite or explode when struck by firearm ammunition or other projectiles.

(19) "Incendiary ammunition" means ammunition that is designed to ignite or explode upon impact with or penetration of a target or designed to trace its course in the air with a trail of smoke, chemical incandescence, or fire.

(20) "Sky lantern" means an unmanned self-contained luminary device that uses heated air produced by an open flame or produced by another source to become or remain airborne.

**Sec. 2.** RCW 76.04.455 and 1986 c 100 s 29 are each amended to read as follows:

(1)(a) Except as otherwise provided in this subsection, it is unlawful ((during the closed season)) for any person to ((throw away)), during the closed season:

(i) Discard any lighted tobacco, cigars, cigarettes, matches, fireworks, charcoal, or other lighted material ((or to)), discharge any ((tracer or)) incendiary

ammunition ((~~in~~)), release a sky lantern, or detonate an exploding target on or over any forest, brush, range, or grain areas((-

(2) It is unlawful during the closed season for any individual to smoke)); or

(ii) Smoke any flammable material when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of flammable material.

(b) The prohibitions contained in this subsection do not apply to the detonation of nonflammable exploding targets on any forest, brush, range, or grain areas if the person detonating the nonflammable exploding target:

(i) Has lawful possession and control of the land in question; or

(ii) Has prior written permission for the activity from the person who owns or has lawful possession and control of the land in question.

(c) The prohibitions contained in this subsection do not apply to suppression actions authorized or conducted by the department under the authority of this chapter.

(2)(a) Except as otherwise provided in this subsection, it is unlawful for any person to, during any time outside of the closed season, discharge any incendiary ammunition, release a sky lantern, or detonate an exploding target on or over any forest, brush, range, or grain areas.

(b) The prohibitions contained in this subsection do not apply if the person conducting the otherwise prohibited action:

(i) Has lawful possession and control of the land in question; or

(ii) Has prior written permission for the activity from the person who owns or has lawful possession and control of the land in question.

(3) Every conveyance operated through or above forest, range, brush, or grain areas ((~~shall~~)) must be equipped in each compartment with a suitable receptacle for the disposition of lighted tobacco, cigars, cigarettes, matches, or other flammable material.

(4) Every person operating a public conveyance through or above forest, range, brush, or grain areas shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill or a logging camp in any such areas shall post a copy of this section in a conspicuous place upon the ground or buildings of the milling or logging operation.

Passed by the Senate March 10, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 91

[Senate Bill 6201]

### LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM—PLAN 2

AN ACT Relating to an optional life annuity benefit for plan 2 members of the law enforcement officers' and firefighters' retirement system; and adding a new section to chapter 41.26 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.26 RCW under the subchapter heading "plan 2" to read as follows:

(1) At the time of retirement, plan 2 members may purchase an optional actuarially equivalent life annuity benefit from the law enforcement officers' and firefighters' retirement system plan 2 retirement fund established in RCW 41.50.075. A minimum payment of twenty-five thousand dollars is required.

(2) Subject to rules adopted by the department, a member purchasing an annuity under this section must pay all of the cost with an eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan.

(a) The department shall adopt rules to ensure that all eligible 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.

(b) "Eligible retirement plan" means a tax qualified plan offered by a governmental employer.

Passed by the Senate February 14, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

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## CHAPTER 92

[Substitute Senate Bill 6226]

### SPIRITS—DISTILLERY SALES—SAMPLES—OFF-PREMISE CONSUMPTION

AN ACT Relating to sales by craft and general licensed distilleries of spirits for off-premise consumption and spirits samples for on-premise consumption; and amending RCW 66.24.145, 66.28.040, 19.126.020, 66.24.140, and 66.28.310.

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

**Sec. 1.** RCW 66.24.145 and 2013 c 98 s 1 are each amended to read as follows:

(1) Any craft distillery may sell spirits of its own production for consumption off the premises (~~(, up to three liters per person per day)~~). A craft distillery selling spirits under this subsection must comply with the applicable laws and rules relating to retailers.

(2) Any craft distillery may contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(3) Any craft distillery licensed under this section may provide, free ~~((€))~~ or for a charge, one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery. The maximum total per person per day is two ounces. Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

(4) The board must adopt rules to implement the alcohol server permit requirement and may adopt additional rules to implement this section.

(5) Distilling is an agricultural practice.

**Sec. 2.** RCW 66.28.040 and 2012 c 2 s 116 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 may, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.305 prevents 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; nothing in this section prevents 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; nothing in this section prevents 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, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under 26 U.S.C. Sec. 501(c)(3) or (6) of the internal revenue code of 1986 for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section prevents a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section prevents donations of wine for the purposes of RCW 66.12.180; nothing in this section prevents a domestic winery from serving wine without charge, on the winery premises; and nothing in this section prevents a craft distillery from serving spirits (~~without charge~~), on the distillery premises subject to RCW 66.24.145.

**Sec. 3.** RCW 19.126.020 and 2012 c 2 s 213 are each amended to read as follows:

The definitions 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) "Authorized representative" has the same meaning as "authorized representative" as defined in RCW 66.04.010.

(3) "Brand" means any word, name, group of letters, symbol, or combination thereof, including the name of the distiller or brewer if the distiller's or brewer's name is also a significant part of the product name, adopted and used by a supplier to identify specific spirits or a specific malt beverage product and to distinguish that product from other spirits or malt beverages produced by that supplier or other suppliers.

(4) "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 spirits or malt beverages 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 distiller or malt beverage manufacturer.

(5) "Importer" means any distributor importing spirits or beer into this state for sale to retailer accounts or for sale to other distributors designated as "subjobbers" for resale.

(6) "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.

(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.

(8) "Spirits manufacturer" means every distiller, processor, bottler, or packager of spirits 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 spirits in this state with any wholesale distributor doing business in the state of Washington.

(9) "Successor distributor" means any distributor who enters into an agreement, whether oral or written, to distribute a brand of spirits or malt beverages after the supplier with whom such agreement is made or the person from whom that supplier acquired the right to manufacture or distribute the brand has terminated, canceled, or failed to renew an agreement of distributorship, whether oral or written, with another distributor to distribute that same brand of spirits or malt beverages.

(10) "Supplier" means any spirits or 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 distiller licensed under RCW 66.24.140 or 66.24.145 and producing less than ~~((sixty))~~ one hundred fifty thousand proof gallons of spirits annually or any brewery or microbrewery licensed under RCW 66.24.240 and producing less than two hundred thousand barrels of malt liquor annually; (b) any brewer or manufacturer of malt liquor producing less than two hundred thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270; or (c) any authorized representative of distillers or malt liquor manufacturers who holds an appointment from one or more distillers or malt liquor manufacturers which, in the aggregate, produce less than two hundred thousand barrels of malt liquor or ~~((sixty))~~ one hundred fifty thousand proof gallons of spirits.

(11) "Terminated distribution rights" means distribution rights with respect to a brand of malt beverages which are lost by a terminated distributor as a result of termination, cancellation, or nonrenewal of an agreement of distributorship for that brand.



(12) "Terminated distributor" means a distributor whose agreement of distributorship with respect to a brand of spirits or malt beverages, whether oral or written, has been terminated, canceled, or not renewed.

**Sec. 4.** RCW 66.24.140 and 2010 c 290 s 1 are each amended to read as follows:

(1) There shall be a license to distillers, including blending, rectifying and bottling; fee two thousand dollars per annum, unless provided otherwise as follows:

~~((1))~~ (a) For distillers producing ~~((sixty))~~ one hundred fifty thousand gallons or less of spirits with at least half of the raw materials used in the production grown in Washington, the license fee ~~((shall))~~ must be reduced to one hundred dollars per annum;

~~((2))~~ (b) The board ~~((shall))~~ must license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of twenty dollars per annum;

~~((3))~~ (c) The board ~~((shall))~~ must license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee; and

~~((4))~~ (d) The board ~~((shall))~~ must license stills ~~((which shall))~~ that have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of two hundred dollars per annum.

(2) Any distillery licensed under this section may:

(a) Sell spirits of its own production for consumption off the premises. A distillery selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;

(b) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export; and

(c) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery. The maximum total per person per day is two ounces. Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

**Sec. 5.** RCW 66.28.310 and 2013 c 107 s 1 are each amended to read as follows:

(1)(a) Nothing in RCW 66.28.305 prohibits an industry member from providing retailers branded promotional items which are of nominal value, singly or in the aggregate. Such items include but are not limited to: Trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(i) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(ii) Must bear imprinted advertising matter of the industry member only, except imprinted advertising matter of the industry member can include the logo of a professional sports team which the industry member is licensed to use;

(iii) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and

(iv) May not be targeted to or appeal principally to youth.

(b) An industry member is not obligated to provide any such branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(c) Any industry member or retailer or any other person asserting that the provision of branded promotional items as allowed in (a) of this subsection has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in (a) of this subsection may file a complaint with the board. Upon receipt of a complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the provision of branded promotional items has resulted in or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety or is otherwise inconsistent with (a) of this subsection the board may issue an administrative violation notice to the industry member, to the retailer, or both. The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(2) Nothing in RCW 66.28.305 prohibits:

(a) An industry member from providing to a special occasion licensee and a special occasion licensee from receiving services 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) Pouring or dispensing of spirits by a licensed domestic distiller or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310; or

(b) Special occasion licensees from paying for beer (~~(or)~~), wine, or spirits immediately following the end of the special occasion event; or

(c) Wineries (~~(or)~~), breweries, or distilleries that are participating in a special occasion event from paying reasonable booth fees to the special occasion licensee.

(3) Nothing in RCW 66.28.305 prohibits industry members from performing, and retailers from accepting the service of building, rotating, and restocking displays and stockroom inventories; rotating and rearranging can and bottle displays of their own products; providing point of sale material and brand signs; pricing case goods of their own brands; and performing such similar business services consistent with board rules, or personal services as described in subsection (5) of this section.

(4) Nothing in RCW 66.28.305 prohibits:

(a) Industry members from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and

(b) Retailers from listing on their internet web sites information related to industry members whose products those retailers sell or promote, including direct links to the industry members' web sites; or

(c) Industry members and retailers from producing, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, industry members, and their products.

(5) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder to retailers when the personal services are (a) conducted at a licensed premises, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, a specialty wine shop license, a special occasion license, a grocery store license with a tasting endorsement, or a private club license. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee, or as a condition for including any product of the domestic winery or certificate of approval holder in any tasting conducted by the licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any domestic winery or certificate of approval holder or any distributor. Nothing in this section prohibits wineries, breweries, microbreweries, certificate of approval holders, and retail licensees from identifying the producers on private labels authorized under RCW 66.24.400, 66.24.425, 66.24.450, 66.24.360, and 66.24.371.

(6) Nothing in RCW 66.28.305 prohibits an industry member from entering into an arrangement with any holder of a sports entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(7) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic brewery, microbrewery, or beer certificate of approval holder to grocery store licensees with a tasting endorsement when the personal services are (a) conducted at a licensed premises in conjunction with a tasting event, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities. A domestic brewery, microbrewery, or beer certificate of approval holder is not obligated to perform any such personal services, and a grocery store licensee may not require the performance of any personal service as a condition for including any product in any tasting conducted by the licensee.

(8) Nothing in RCW 66.28.305 prohibits an arrangement between a domestic winery and a restaurant licensed under RCW 66.24.320 or 66.24.400 to waive a corkage fee.

(9) Nothing in this section prohibits professional sports teams who hold a retail liquor license or their agents from accepting bona fide liquor advertising from manufacturers, importers, distributors, or their agents for use in the sporting arena. Professional sports teams who hold a retail liquor license or their

agents may license the manufacturer, importer, distributor, or their agents to use the name and trademarks of the professional sports team in their advertising and promotions, under the following conditions:

(a) Such advertising must be paid for by said manufacturer, importer, distributor, or their agent at the published advertising rate or at a reasonable fair market value.

(b) Such advertising may carry with it no express or implied offer on the part of the manufacturer, importer, distributor, or their agent, or promise on the part of the retail licensee whose operation is directly or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

Passed by the Senate February 18, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 93

[Substitute Senate Bill 6279]

### SEARCH WARRANTS—MAGISTRATE ACCESS

AN ACT Relating to creating effective and timely access to magistrates for purposes of reviewing search warrant applications; amending RCW 9A.72.085; adding a new section to chapter 2.20 RCW; adding a new section to chapter 10.79 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 recent decisions of the United States supreme court and the Washington state supreme court require law enforcement to obtain the review of a neutral and disinterested magistrate and the issuance of a search warrant more frequently before proceeding with a criminal investigation. The legislature intends to accommodate this requirement by creating effective and timely access to magistrates for purposes of reviewing search warrant applications across the state of Washington. This act does not change the legal standards for issuing a search warrant or the legal standards for review of an issued search warrant.

**NEW SECTION. Sec. 2.** A new section is added to chapter 2.20 RCW to read as follows:

Any district or municipal court judge, in the county in which the offense is alleged to have occurred, may issue a search warrant for any person or evidence located anywhere within the state.

**NEW SECTION. Sec. 3.** A new section is added to chapter 10.79 RCW to read as follows:

(1) Any magistrate as defined by RCW 2.20.010, when satisfied that there is probable cause, may upon application supported by oath or affirmation, issue a search warrant to search for and seize any: (a) Evidence of a crime; (b) contraband, the fruits of crime, or things otherwise criminally possessed; (c) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (d) person for whose arrest there is probable cause or who is unlawfully restrained.

(2) The application may be provided or transmitted to the magistrate by telephone, e-mail, or any other reliable method.

(3) If the magistrate finds that probable cause for the issuance of a warrant exists, the magistrate must issue a warrant or direct an individual whom the magistrate authorizes to affix the magistrate's signature to a warrant identifying the property or person and naming or describing the person, place, or thing to be searched. The magistrate may communicate permission to affix the magistrate's signature to the warrant by telephone, e-mail, or any other reliable method.

(4) The evidence in support of the finding of probable cause and a record of the magistrate's permission to affix the magistrate's signature to the warrant shall be preserved and shall be filed with the issuing court as required by CrRLJ 2.3 or CrR 2.3.

**Sec. 4.** RCW 9A.72.085 and 1981 c 187 s 3 are each amended to read as follows:

(1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter in an official proceeding is required or permitted to be supported, evidenced, established, or proved by a person's sworn written statement, declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved in the official proceeding by an unsworn written statement, declaration, verification, or certificate, which:

~~((1))~~ (a) Recites that it is certified or declared by the person to be true under penalty of perjury;

~~((2))~~ (b) Is subscribed by the person;

~~((3))~~ (c) States the date and place of its execution; and

~~((4))~~ (d) States that it is so certified or declared under the laws of the state of Washington.

(2) The certification or declaration may be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":

.....

(Date and Place)

(Signature)

(3) For purposes of this section, a person subscribes to an unsworn written statement, declaration, verification, or certificate by:

(a) Affixing or placing his or her signature as defined in RCW 9A.04.110 on the document;

(b) Attaching or logically associating his or her digital signature or electronic signature as defined in RCW 19.34.020 to the document;

(c) Affixing or logically associating his or her signature in the manner described in general rule 30 to the document if he or she is a licensed attorney; or

(d) Affixing or logically associating his or her full name, department or agency, and badge or personnel number to any document that is electronically submitted to a court, a prosecutor, or a magistrate from an electronic device that is owned, issued, or maintained by a criminal justice agency if he or she is a law enforcement officer.

(4) This section does not apply to writings requiring an acknowledgment, depositions, oaths of office, or oaths required to be taken before a special official other than a notary public.

Passed by the Senate March 10, 2014.  
Passed by the House March 5, 2014.  
Approved by the Governor March 27, 2014.  
Filed in Office of Secretary of State March 27, 2014.

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**CHAPTER 94**

[Senate Bill 6284]

**PUBLIC HEALTH SUPPLEMENTAL ACCOUNT—EXPENDITURES**

AN ACT Relating to expenditures from the public health supplemental account; and amending RCW 43.70.327.

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

**Sec. 1.** RCW 43.70.327 and 2001 c 80 s 3 are each amended to read as follows:

(1) The public health supplemental account is created in the state treasury. All receipts from gifts, bequests, devises, or funds, whose use is determined to further the purpose of maintaining and improving the health of Washington residents through the public health system must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for maintaining and improving the health of Washington residents through the public health system, which may include funding for staff. (~~Expenditures from the account shall not be used to pay for or add permanent full-time equivalent staff positions.~~)

(2) The department shall file an annual statement of the financial condition, transactions, and affairs of any program funded under this section in a form and manner prescribed by the office of financial management. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

Passed by the Senate February 18, 2014.  
Passed by the House March 7, 2014.  
Approved by the Governor March 27, 2014.  
Filed in Office of Secretary of State March 27, 2014.

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**CHAPTER 95**

[Senate Bill 6321]

**PUBLIC EMPLOYEES—RETIREMENT—CONTRIBUTION RATE OPTIONS**

AN ACT Relating to removing the statutory provision that allows members of plan 3 of the public employees' retirement system, school employees' retirement system, and teachers' retirement system to select a new contribution rate option each year; and amending RCW 41.34.040.

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

**Sec. 1.** RCW 41.34.040 and 2010 1st sp.s. c 7 s 32 are each amended to read as follows:

(1) A member shall contribute from his or her compensation according to one of the following rate structures in addition to the mandatory minimum five percent:

|                  |                   |
|------------------|-------------------|
| Option A         | Contribution Rate |
| All Ages         | 0.0% fixed        |
| Option B         |                   |
| Up to Age 35     | 0.0%              |
| Age 35 to 44     | 1.0%              |
| Age 45 and above | 2.5%              |
| Option C         |                   |
| Up to Age 35     | 1.0%              |
| Age 35 to 44     | 2.5%              |
| Age 45 and above | 3.5%              |
| Option D         |                   |
| All Ages         | 2.0%              |
| Option E         |                   |
| All Ages         | 5.0%              |
| Option F         |                   |
| All Ages         | 10.0%             |

(2) The department shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the department shall conform to the requirements stated in subsections (3) and (5) of this section.

(3)(a) For members of the teachers' retirement system entering plan 3 under RCW 41.32.835 or members of the school employees' retirement system entering plan 3 under RCW 41.35.610, within ninety days of becoming a member he or she has an option to choose one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(b) For members of the public employees' retirement system entering plan 3 under RCW 41.40.785, within the ninety days described in RCW 41.40.785 an employee who irrevocably chooses plan 3 shall select one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(c) For members of the teachers' retirement system transferring to plan 3 under RCW 41.32.817, members of the school employees' retirement system transferring to plan 3 under RCW 41.35.510, or members of the public employees' retirement system transferring to plan 3 under RCW 41.40.795, upon election to plan 3 he or she must choose one of the above contribution rate structures.

(d) Within ninety days of the date that an employee changes employers, he or she has an option to choose one of the above contribution rate structures. If

the member does not select an option within this ninety-day period, he or she shall be assigned option A.

(4) Each year, through January of 2015, members of plan 3 of the teachers' retirement system may change their contribution rate option by notifying their employer in writing during the month of January. After January of 2015, a member of plan 3 of the teachers' retirement system may only change their contribution rate option under subsection (3)(d) of this section. The termination of this annual contribution rate change option in January 2015 is required to meet the plan qualification requirements in section 401(a) of the internal revenue code. Consistent with plan qualification requirements in the internal revenue code, this annual contribution rate change has never been available to plan 3 members of the public employees' retirement system and the school employees' retirement system.

(5) Contributions shall begin the first day of the pay cycle in which the rate option is made, or the first day of the pay cycle in which the end of the ninety-day period occurs.

Passed by the Senate February 13, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 96

[Second Substitute Senate Bill 6330]

### PROPERTY TAX EXEMPTION—UNINCORPORATED URBAN GROWTH AREAS— RURAL COUNTIES

AN ACT Relating to promoting affordable housing in unincorporated areas of rural counties within urban growth areas; amending RCW 84.14.007, 84.14.040, and 84.14.060; reenacting and amending RCW 84.14.010; and creating a new section.

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

**NEW SECTION. Sec. 1.** This section is the tax preference performance statement for the tax preference contained in RCW 84.14.040 and 84.14.060. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to stimulate the construction of new multifamily housing in urban growth areas located in unincorporated areas of rural counties where housing options, including affordable housing options, are severely limited. It is the legislature's intent to provide the value of new housing construction, conversion, and rehabilitation improvements qualifying under chapter 84.14 RCW an exemption from ad valorem property taxation for eight to twelve years, as provided for in RCW 84.14.020, in order to provide incentives to developers to construct new multifamily housing thereby increasing the number of affordable housing units for low to moderate-income residents in certain rural counties.



(3) If a review finds that at least twenty percent of the new housing is developed and occupied by households making at or below eighty percent of the area median income, at the time of occupancy, adjusted for family size for the county where the project is located or where the housing is intended exclusively for owner occupancy, the household may earn up to one hundred fifteen percent of the area median income, at the time of sale, adjusted for family size for the county where the project is located, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data provided by counties in which beneficiaries are utilizing the preference, the office of financial management, the department of commerce, the United States department of housing and urban development, and other data sources as needed by the joint legislative audit and review committee.

**Sec. 2.** RCW 84.14.007 and 2012 c 194 s 1 are each amended to read as follows:

It is the purpose of this chapter to encourage increased residential opportunities, including affordable housing opportunities, in cities that are required to plan or choose to plan under the growth management act within urban centers where the governing authority of the affected city has found there is insufficient housing opportunities, including affordable housing opportunities. It is further the purpose of this chapter to stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multifamily housing in urban centers having insufficient housing opportunities that will increase and improve residential opportunities, including affordable housing opportunities, within these urban centers. To achieve these purposes, this chapter provides for special valuations in residentially deficient urban centers for eligible improvements associated with multiunit housing, which includes affordable housing. It is an additional purpose of this chapter to allow unincorporated areas of rural counties that are within urban growth areas to stimulate housing opportunities and for certain counties to stimulate housing opportunities near college campuses to promote dense, transit-oriented, walkable college communities.

**Sec. 3.** RCW 84.14.010 and 2012 c 194 s 2 are each reenacted and 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) "Affordable housing" means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "affordable housing" means residential housing that is within the means of low or moderate-income households.

(2) "Campus facilities master plan" means the area that is defined by the University of Washington as necessary for the future growth and development of its campus facilities for branch campuses authorized under RCW 28B.45.020.

(3) "City" means either (a) a city or town with a population of at least fifteen thousand, (b) the largest city or town, if there is no city or town with a population of at least fifteen thousand, located in a county planning under the growth management act, or (c) a city or town with a population of at least five thousand located in a county subject to the provisions of RCW 36.70A.215.

(4) "County" means a county with an unincorporated population of at least three hundred fifty thousand.

(5) "Governing authority" means the local legislative authority of a city or a county having jurisdiction over the property for which an exemption may be applied for under this chapter.

(6) "Growth management act" means chapter 36.70A RCW.

(7) "High cost area" means a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.

(8) "Household" means a single person, family, or unrelated persons living together.

(9) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "low-income household" means a household that has an income at or below one hundred percent of the median family income adjusted for family size, for the county where the project is located.

(10) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than eighty percent but is at or below one hundred fifteen percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "moderate-income household" means a household that has an income that is more than one hundred percent, but at or below one hundred fifty percent, of the median family income adjusted for family size, for the county where the project is located.

(11) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(12) "Owner" means the property owner of record.

(13) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental accommodation that is leased for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(14) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification

to existing occupied structures which increase the number of multifamily housing units.

(15) "Residential targeted area" means an area within an urban center or urban growth area that has been designated by the governing authority as a residential targeted area in accordance with this chapter. With respect to designations after July 1, 2007, "residential targeted area" may not include a campus facilities master plan.

(16) "Rural county" means a county with a population between fifty thousand and seventy-one thousand and bordering Puget Sound.

(17) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

~~((17))~~ (18) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use.

**Sec. 4.** RCW 84.14.040 and 2012 c 194 s 4 are each amended to read as follows:

(1) The following criteria must be met before an area may be designated as a residential targeted area:

(a) The area must be within an urban center, as determined by the governing authority;

(b) The area must lack, as determined by the governing authority, sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center, if the affordable, desirable, attractive, and livable places to live were available;

(c) The providing of additional housing opportunity, including affordable housing, in the area, as determined by the governing authority, will assist in achieving one or more of the stated purposes of this chapter; and

(d) If the residential targeted area is designated by a county, the area must be located in an unincorporated area of the county that is within an urban growth area under RCW 36.70A.110 and the area must be: (i) In a rural county, served by a sewer system and designated by a county prior to January 1, 2013; or (ii) in a county that includes a campus of an institution of higher education, as defined in RCW 28B.92.030, where at least one thousand two hundred students live on campus during the academic year.

(2) For the purpose of designating a residential targeted area or areas, the governing authority may adopt a resolution of intention to so designate an area as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the designation of the area and may include such other information pertaining to the

designation of the area as the governing authority determines to be appropriate to apprise the public of the action intended.

(3) The governing authority must give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than thirty days before the date of the hearing in a paper having a general circulation in the city or county where the proposed residential targeted area is located. The notice must state the time, date, place, and purpose of the hearing and generally identify the area proposed to be designated as a residential targeted area.

(4) Following the hearing, or a continuance of the hearing, the governing authority may designate all or a portion of the area described in the resolution of intent as a residential targeted area if it finds, in its sole discretion, that the criteria in subsections (1) through (3) of this section have been met.

(5) After designation of a residential targeted area, the governing authority must adopt and implement standards and guidelines to be utilized in considering applications and making the determinations required under RCW 84.14.060. The standards and guidelines must establish basic requirements for both new construction and rehabilitation, which must include:

(a) Application process and procedures;

(b) Requirements that address demolition of existing structures and site utilization; and

(c) Building requirements that may include elements addressing parking, height, density, environmental impact, and compatibility with the existing surrounding property and such other amenities as will attract and keep permanent residents and that will properly enhance the livability of the residential targeted area in which they are to be located.

(6) The governing authority may adopt and implement, either as conditions to eight-year exemptions or as conditions to an extended exemption period under RCW 84.14.020(1)(a)(ii)(B), or both, more stringent income eligibility, rent, or sale price limits, including limits that apply to a higher percentage of units, than the minimum conditions for an extended exemption period under RCW 84.14.020(1)(a)(ii)(B). For any multiunit housing located in an unincorporated area of a county, a property owner seeking tax incentives under this chapter must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households. In the case of multiunit housing intended exclusively for owner occupancy, the minimum requirement of this subsection (6) may be satisfied solely through housing affordable to moderate-income households.

**Sec. 5.** RCW 84.14.060 and 2012 c 194 s 6 are each amended to read as follows:

(1) The duly authorized administrative official or committee of the city or county may approve the application if it finds that:

(a) A minimum of four new units are being constructed or in the case of occupied rehabilitation or conversion a minimum of four additional multifamily units are being developed;

(b) If applicable, the proposed multiunit housing project meets the affordable housing requirements as described in RCW 84.14.020;

(c) The proposed project is or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;

(d) The owner has complied with all standards and guidelines adopted by the city or county under this chapter; and

(e) The site is located in a residential targeted area of an urban center or urban growth area that has been designated by the governing authority in accordance with procedures and guidelines indicated in RCW 84.14.040.

(2) An application may not be approved after July 1, 2007, if any part of the proposed project site is within a campus facilities master plan, except as provided in RCW 84.14.040(1)(d).

(3) An application may not be approved for a residential targeted area in a rural county on or after January 1, 2020.

Passed by the Senate March 11, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 97

[Substitute Senate Bill 6333]

### TAX STATUTES—MISCELLANEOUS

AN ACT Relating to tax statute clarifications, simplifications, and technical corrections; amending RCW 34.05.010, 82.32.534, 82.32.585, 82.32.235, 82.04.285, 82.04.460, 82.04.462, 82.08.02807, 82.45.150, 82.45.195, 84.33.140, 84.34.065, 84.34.300, 84.34.330, 84.34.370, 84.55.005, 82.08.02061, 82.04.250, 82.04.250, 82.04.250, 82.04.290, 82.04.290, 82.08.9651, 82.12.9651, 84.40.038, 84.40.175, 82.44.015, 82.08.0287, 82.12.0282, 82.08.855, 82.08.890, 82.12.855, and 82.12.890; reenacting and amending RCW 60.28.040, 82.04.190, 84.34.108, 84.34.320, and 46.74.010; repealing RCW 82.32.795; and providing a contingent expiration date.

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

### Part I

#### Improving Administrative Efficiency

**Sec. 101.** RCW 34.05.010 and 2013 c 110 s 3 are each amended to read as follows:

The definitions (~~(set forth)~~) in this section (~~(shall)~~) apply throughout this chapter (~~(;)~~) unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law

and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution,

as provided in RCW 34.05.260. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, ~~(iv)~~ (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes, or (v) the determination and publication of updated nexus thresholds by the department of revenue in accordance with RCW 82.04.067.

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal or electronic service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic transmission, or by commercial parcel delivery company.

**Sec. 102.** RCW 82.32.534 and 2010 c 114 s 103 are each amended to read as follows:

(1)(a) Every person claiming a tax preference that requires a report under this section must file a complete annual report with the department. The report is due by April 30th of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section. The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed.

(c) Persons receiving the benefit of the tax preference provided by RCW 82.16.0421 or claiming any of the tax preferences provided by RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must indicate on the annual report the quantity of product produced in this state during the time period covered by the report.

(d) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and benefit information for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(2) As part of the annual report, the department may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(3) Other than information requested under subsection (2) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4) Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this section but fails to submit a complete report by the due date or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar



year to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by ~~((October))~~ December 1st.

(6) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a survey under this section.

**Sec. 103.** RCW 82.32.585 and 2011 c 23 s 6 are each amended to read as follows:

(1)(a) Every person claiming a tax preference that requires a survey under this section must file a complete annual survey with the department.

(i) Except as provided in (a)(ii) of this subsection, the survey is due by April 30th of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a survey under this section.

(ii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete, and a survey must be filed by April 30th of each of the seven succeeding calendar years.

(b) The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590.

(2)(a) The survey must include the amount of the tax preference claimed for the calendar year covered by the survey. For a person that claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the survey must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(b) The survey must also include the following information for employment positions in Washington, not to include names of employees, for the year that the tax preference was claimed:

(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) For persons claiming the tax preference provided under chapter 82.60 or 82.63 RCW, the survey must also include 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.

(d) For persons claiming the credit provided under RCW 82.04.4452, the survey must also include the qualified research and development expenditures during the calendar year for which the credit was claimed, the taxable amount during the calendar year for which the credit was claimed, the number of new products or research projects by general classification, the number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed, and whether the tax preference has been assigned, and who assigned the credit. The definitions in RCW 82.04.4452 apply to this subsection (2)(d).

(e) For persons claiming the tax exemption in RCW 82.08.025651 or 82.12.025651, the survey must also include the general areas or categories of research and development for which machinery and equipment and labor and services were acquired, exempt from tax under RCW 82.08.025651 or 82.12.025651, in the prior calendar year.

(f) If the person filing a survey under this section did not file a survey with the department in the previous calendar year, the survey filed under this section must also include the employment, wage, and benefit information required under (b)(i) through (iv) of this subsection for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(3) As part of the annual survey, the department may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(4) All information collected under this section, except the information required in subsection (2)(a) of this section, is deemed taxpayer information under RCW 82.32.330. Information required in subsection (2)(a) of this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in subsection (5) of this section. If the amount of the tax preference claimed as reported on the survey is different than the amount actually claimed or otherwise allowed by the department based on the taxpayer's excise tax returns or other information known to the department, the amount actually claimed or allowed may be disclosed.

(5) Persons for whom the actual amount of the tax reduced or saved is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction or savings as confidential under RCW 82.32.330.

(6)(a) Except as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this section but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar year to be immediately due. If the tax preference is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee,

the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(b) The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(7) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by ~~((October))~~ December 1st.

(8) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a survey under this section.

**Sec. 104.** RCW 82.32.235 and 2009 c 562 s 1 are each amended to read as follows:

(1) In addition to the remedies provided in this chapter the department is authorized to issue to any person, including the department, a notice and order to withhold and deliver property of any kind whatsoever when there is reason to believe that there is in the possession of such person, property which is or will become due, owing, or belonging to any taxpayer against whom a warrant has been filed.

(2) The sheriff of the county where the service is made, or his or her deputy, or any duly authorized representative of the department may personally serve the notice and order to withhold and deliver upon the person to whom it is directed or may do so by certified mail, with return receipt requested. Upon written consent of the person to be served, a notice and order to withhold and deliver issued under subsection (1) of this section may be served electronically.

(3)(a) The department is authorized to issue a notice and order to withhold and deliver to any financial institution in the form of a listing of all or a portion of the unsatisfied tax warrants filed under this chapter with the clerk of the superior court of a county of the state, except tax warrants subject to a payment agreement, which is not in default, between the department and the taxpayer. The department may also issue a notice and order to withhold and deliver in the form authorized in this subsection (3)(a) to itself or any other person upon that person's written consent.

~~(b) ((As an alternative to the methods of service in subsection (2) of this section,))~~ The department may serve the notice and order to withhold and deliver authorized under this subsection electronically. The remedy in this subsection (3) is in addition to any other remedies authorized by law.

(c) No more than one notice and order to withhold and deliver under this subsection (3) may be served on the same ~~((financial institution in a calendar month))~~ person in a calendar month except upon the person's written consent.

(d) A notice and order to withhold and deliver served on a financial institution under this subsection (3) must include the federal taxpayer identification number of each taxpayer listed in the notice.

(e) For purposes of this subsection, "financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(f) The department may provide a financial institution relief from a notice and order to withhold and deliver in the form provided under this subsection (3) upon the request of the financial institution. The department must consider the size, customer base, and geographic location of the financial institution when considering whether to provide relief. The department must serve any financial institution so relieved under subsection (1) of this section.

(4) Any person who has been served with a notice and order to withhold and deliver under subsection (1) of this section must answer the notice within twenty days, exclusive of the day of service. Any person who has been served with a notice and order to withhold and deliver under subsection (3) of this section must answer the notice within thirty days, exclusive of the day of service. The answer must be in writing, under oath if required by the department, and include true answers to the matters inquired of in the notice. Any person served under subsection (3) of this section may answer in aggregate within thirty days, but must answer separately as to each taxpayer listed and specify any property by taxpayer which is delivered. The department must allow any person served electronically (~~under subsection (3))~~ as authorized in subsection (2) or (3) of this section to answer the notice and order to withhold and deliver electronically in a format provided or approved by the department.

(5) In the event there is in the possession of any person served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property must be delivered immediately to the department of revenue or its duly authorized representative upon demand. The department must hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. Instead of delivering the property to the department or the department's duly authorized representative, the person may furnish a bond satisfactory to the department conditioned upon final determination of liability.

(6) Should any person, having been served with a notice and order to withhold and deliver, fail to answer the notice and order to withhold and deliver within the time prescribed in this section or otherwise fail to comply with the duties imposed in this section, the department may bring a proceeding, in the superior court of Thurston county or of the county in which service of the notice was made, to enforce the notice and order to withhold and deliver. The court may render judgment by default against such person for the full amount claimed by the department in the notice and order to withhold and deliver or may grant such other relief as the court deems just, together with costs.

(7) For purposes of this section, "person" has the same meaning as in RCW 82.04.030 and also includes any agency, department, or institution of the state.

**Part II**  
**Repealing Obsolete Statutes**

NEW SECTION. **Sec. 201.** RCW 82.32.795 (Candy list—Compilation) and 2010 1st sp.s. c 23 s 910 are each repealed.

**Part III**  
**Clarifying and Corrective Amendments**

**Sec. 301.** RCW 60.28.040 and 2009 c 432 s 7 and 2009 c 219 s 7 are each reenacted and amended to read as follows:

(1) Subject to subsection (5) of this section, the amount of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more, (~~shall be~~) is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(2) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is (~~twenty~~) thirty-five thousand dollars or more, the amount of all other taxes, increases, and penalties under Title 82 RCW, due and owing from the contractor, (~~shall be~~) is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(3) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, the amount of all taxes, increases, and penalties due or to become due under Titles 50 and 51 RCW from the contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is (~~twenty~~) thirty-five thousand dollars or more (~~shall be~~) is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(4) Subject to subsection (5) of this section, the amount of all other taxes, increases, and penalties due and owing from the contractor (~~shall be~~) is a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

(5) The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens.

**Sec. 302.** RCW 82.04.190 and 2010 c 111 s 202 and 2010 c 106 s 204 are each reenacted and 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 of:

(a) Resale as tangible personal property in the regular course of business;

(b) 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;

(c) Consuming such property in producing for sale as 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;

(d) 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) Satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are 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 (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer 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 is 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 may 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 by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(b) other than:

(a) For resale in the regular course of business; or

(b) For purposes of consuming the service described in RCW 82.04.050(6)(b) in producing for sale a new product, but only if such service becomes a component of the new product. For purposes of this subsection (10), "product" means a digital product, an article of tangible personal property, or the service described in RCW 82.04.050(6)(b);

(11)(a) Any end user of a digital product or digital code. "Consumer" does not include any person who is not an end user of a digital product or a digital code and purchases, acquires, owns, holds, or uses any digital product or digital code for purposes of consuming the digital product or digital code in producing for sale a new product, but only if the digital product or digital code becomes a component of the new product. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product. For purposes of this subsection, "product" has the same meaning as in subsection (10) of this section.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates; ~~((and))~~

(12) Any person who provides services described in RCW 82.04.050(9). Any such person is a consumer with respect to the purchase, acquisition, or use of the tangible personal property that the person provides along with an operator in rendering services defined as a retail sale in RCW 82.04.050(9). Any such person may also be a consumer under other provisions of this section;

(13) Any person who purchases, acquires, owns, holds, or uses chemical sprays or washes for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, or who purchases feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials, is not a consumer of such items, but only to the extent that the items:

(a) Are used in relation to the person's participation in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;



(b) Are for use by a farmer for the purpose of producing for sale any agricultural product; or

(c) Are for use by a farmer to produce or improve wildlife habitat on land the farmer owns or leases while 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) of the federal internal revenue code or the Washington state department of fish and wildlife; and

(14) A regional transit authority is not a consumer with respect to labor, services, or tangible personal property purchased pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a transit agency, as defined in RCW 81.104.015, performs the labor or services.

**Sec. 303.** RCW 82.04.285 and 2005 c 369 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of operating contests of chance; as to such persons, the amount of tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 1.5 percent.

(2) An additional tax is imposed on those persons subject to tax in subsection (1) of this section. The amount of the additional tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this subsection (2) shall be deposited in the problem gambling account created in RCW 43.20A.892. This subsection does not apply to businesses operating contests of chance when the gross income from the operation of contests of chance is less than fifty thousand dollars per year.

(3)(a) For the purpose of this section, "contests of chance" means any contests, games, gaming schemes, or gaming devices, other than the state lottery as defined in RCW 67.70.010, in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor in the outcome. The term includes social card games, bingo, raffle, and punchboard games, and pull-tabs as defined in chapter 9.46 RCW.

(b) The term does not include: (i) Race meet((s)) for the conduct of which a license must be secured from the Washington horse racing commission, ((✕)) (ii) "amusement game" as defined in RCW 9.46.0201, or (iii) any activity that is not subject to regulation by the gambling commission.

(4) "Gross income of the business" does not include the monetary value or actual cost of any prizes that are awarded, amounts paid to players for winning wagers, accrual of prizes for progressive jackpot contests, or repayment of amounts used to seed guaranteed progressive jackpot prizes.

**Sec. 304.** RCW 82.04.460 and 2011 c 174 s 203 are each amended to read as follows:

(1) Except as otherwise provided in this section, any person earning apportionable income taxable under this chapter and also taxable in another state must, for the purpose of computing tax liability under this chapter, apportion to this state, in accordance with RCW 82.04.462, that portion of the person's

apportionable income derived from business activities performed within this state.

(2) The department must by rule provide a method of apportioning the apportionable income of financial institutions, where such apportionable income is taxable under RCW 82.04.290. The rule adopted by the department must, to the extent feasible, be consistent with the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, except that:

(a) The department's rule must provide for a single factor apportionment method based on the receipts factor; and

(b) The definition of "financial institution" contained in appendix A to the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions is advisory only.

(3) The department may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service 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 rule must provide for an equitable and constitutionally permissible division of the tax base.

(4) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under this chapter. For purposes of this subsection, "apportionable activities" means only those activities taxed under:

(i) RCW 82.04.255;

(ii) RCW 82.04.260 (3), ~~((4))~~ (5), (6), (7), (8), (9), (10), and ~~((12))~~ (13);

(iii) RCW 82.04.280 (1)(e);

(iv) RCW 82.04.285;

(v) RCW 82.04.286;

(vi) RCW 82.04.290;

(vii) RCW 82.04.2907;

(viii) RCW 82.04.2908;

(ix) RCW 82.04.263, but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (4) if the tax classification in RCW 82.04.263 did not exist; and

(x) RCW 82.04.260~~((13))~~ (14) and 82.04.280(1)(a), but only with respect to advertising.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business

activities tax on such income under the substantial nexus standards in RCW 82.04.067(1).

(ii) For purposes of this subsection (4)(b), "business activities tax" and "state" have the same meaning as in RCW 82.04.462.

**Sec. 305.** RCW 82.04.462 and 2010 1st sp.s. c 23 s 105 are each amended to read as follows:

(1) The apportionable income of a person within the scope of RCW 82.04.460(1) is apportioned to Washington by multiplying its apportionable income by the receipts factor. Persons who are subject to tax under more than one of the tax classifications enumerated in RCW 82.04.460(4)(a) (i) through (x) must calculate a separate receipts factor for each tax classification that the person is taxable under.

(2) For purposes of subsection (1) of this section, the receipts factor is a fraction and is calculated as provided in subsections (3) and (4) of this section and, for financial institutions, as provided in the rule adopted by the department under the authority of RCW 82.04.460(2).

(3)(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the tax year from engaging in an apportionable activity. The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year.

(b) Except as otherwise provided in this section, for purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property. When a customer receives the benefit of the taxpayer's services or uses the taxpayer's intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received or intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state and if the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) of this subsection (3), gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

(iii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) or (ii) of this subsection (3), gross income of the business must be attributed to the state from which the customer ordered the service or, in the case of royalties, the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(iv) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), or (iii) of this subsection (3), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(v) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), or (iv) of this subsection (3), gross income of

the business must be attributed to the state from which the customer sends payment to the taxpayer.

(vi) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of this subsection (3), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (A) Shown in the taxpayer's business records maintained in the regular course of business; or (B) obtained during consummation of the sale or the negotiation of the contract for services or for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(vii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), (v), or (vi) of this subsection (3), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(viii) For purposes of this subsection (3)(b), "customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business. "Customer" includes anyone who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the receipts factor if, in respect to such activity, at least some of the activity is performed in this state, and the gross income is attributable under (b) of this subsection (3) to a state in which the taxpayer is not taxable. For purposes of this subsection (3)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that state, except that a taxpayer is taxable in a state in which it would be deemed to have a substantial nexus with that state under the standards in RCW 82.04.067(1) regardless of whether that state imposes such a tax. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) This subsection (3) does not apply to financial institutions with respect to apportionable income taxable under RCW 82.04.290. Financial institutions must calculate the receipts factor as provided in subsection (4) of this section and the rule adopted by the department under the authority of RCW 82.04.460(2) with respect to apportionable income taxable under RCW 82.04.290. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x) must calculate a separate receipts factor, as provided in this section, for each of the other tax classifications that the financial institution is taxable under.

(4) A taxpayer may calculate the receipts factor for the current tax year based on the most recent calendar year for which information is available for the full calendar year. If a taxpayer does not calculate the receipts factor for the current tax year based on previous calendar year information as authorized in

this subsection, the business must use current year information to calculate the receipts factor for the current tax year. In either case, a taxpayer must correct the reporting for the current tax year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following tax year. Interest will apply to any additional tax due on a corrected tax return. Interest must be ~~((assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the original return was due, and will accrue))~~ computed and assessed as provided in RCW 82.32.050 and accrues until the additional taxes are paid. Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the current tax year reporting is not corrected and the additional tax is not paid by October 31st of the following tax year. Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current-year data to calculate the receipts factor.

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

(a) "Apportionable activities" and "apportionable income" have the same meaning as in RCW 82.04.460.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

**Sec. 306.** RCW 82.08.02807 and 2002 c 113 s 2 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to the sales of medical supplies, chemicals, or materials to an organ procurement organization exempt under RCW 82.04.326. ~~((The definitions of medical supplies, chemicals, and materials in RCW 82.04.324 apply to this section.))~~ This exemption does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

**Sec. 307.** RCW 82.45.150 and 1996 c 149 s 6 are each amended to read as follows:

All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and 82.32.090 (1) and ~~((8))~~ (10), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter. The rules shall prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right-of-way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter.

**Sec. 308.** RCW 82.45.195 and 2010 1st sp.s. c 23 s 518 are each amended to read as follows:

A sale of standing timber is exempt from tax under this chapter if the gross income from such sale is taxable under RCW 82.04.260(~~((H))~~) (12)(d).

**Sec. 309.** RCW 84.33.140 and 2013 2nd sp.s. c 11 s 13 are each amended to read as follows:

(1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation must be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor must list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor must compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land are as follows:

| LAND GRADE | OPERABILITY CLASS | VALUES PER ACRE |
|------------|-------------------|-----------------|
| 1          | 1                 | \$234           |
|            | 2                 | 229             |
|            | 3                 | 217             |
|            | 4                 | 157             |
| 2          | 1                 | 198             |
|            | 2                 | 190             |
|            | 3                 | 183             |
|            | 4                 | 132             |
| 3          | 1                 | 154             |
|            | 2                 | 149             |
|            | 3                 | 148             |
|            | 4                 | 113             |
| 4          | 1                 | 117             |
|            | 2                 | 114             |
|            | 3                 | 113             |
|            | 4                 | 86              |
| 5          | 1                 | 85              |
|            | 2                 | 78              |
|            | 3                 | 77              |
|            | 4                 | 52              |
| 6          | 1                 | 43              |
|            | 2                 | 39              |
|            | 3                 | 39              |

|   |   |    |
|---|---|----|
|   | 4 | 37 |
|   | 1 | 21 |
| 7 | 2 | 21 |
|   | 3 | 20 |
|   | 4 | 20 |
| 8 |   | 1  |

(3) On or before December 31, 2001, the department must adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and must certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department must:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section must be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment must be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values must be successively one year more recent.

(5) Land graded, assessed, and valued as forest land must continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, does not, by itself, result in removal of designation. The signed notice of continuance must be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section are due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of

continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land may not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient must annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land may not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor has the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal applies only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal applies only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved



for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation must immediately be made upon the assessment and tax rolls. The assessor must revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation must be listed. Taxes based on the value of the land as forest land are assessed and payable up until the date of removal and taxes based on the true and fair value of the land are assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax is imposed on land removed from designation as forest land. The compensating tax is due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor must compute the amount of compensating tax, and the treasurer must mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax is equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, becomes a lien on the land, which attaches at the time the land is removed from designation as forest land and has priority and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date will thereupon become delinquent. From the date of delinquency until paid, interest is charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) a sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power based on official action taken by the entity and confirmed in writing;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section is imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i)(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For purposes of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax is imposed upon the current owner.

**Sec. 310.** RCW 84.34.065 and 2001 c 249 s 13 are each amended to read as follows:

(1) The true and fair value of farm and agricultural land shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. The earning or productive capacity of farm and agricultural lands (~~shall be~~) is the "net cash rental," capitalized at a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes. The current use value of land under RCW 84.34.020(2)(~~e~~-~~shall~~) (f) must be established as: The prior year's average value of open space farm and agricultural land used in the county plus the value of land improvements such as septic, water, and power used to serve the residence. This (~~shall~~) may not be interpreted to require the assessor to list improvements to the land with the value of the land.

(2) For the purposes of the above computation:

~~((1))~~ (a)(i) The term "net cash rental" (~~shall~~) means the average rental paid on an annual basis, in cash, for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. There (~~shall be~~) is allowed as a deduction from the rental received or computed any costs of crop production charged against the landlord if the costs are such as are customarily paid by a landlord. If "net cash rental" data is not available, the earning or productive capacity of farm and agricultural lands (~~shall be~~) is determined by the cash value of typical or usual crops grown on land of similar quality and similarly situated averaged over not less than five years. Standard costs of production (~~shall be~~) are allowed as a deduction from the cash value of the crops.

(ii) The current "net cash rental" or "earning capacity" (~~shall be~~) is determined by the assessor with the advice of the advisory committee as provided in RCW 84.34.145, and through a continuing internal study, assisted by studies of the department of revenue. This net cash rental figure as it applies to any farm and agricultural land may be challenged before the same boards or authorities as would be the case with regard to assessed values on general property.

~~((2))~~ (b)(i) The term "rate of interest" (~~shall~~) means the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar legal instruments, averaged over the immediate past five years.

(ii) The "rate of interest" (~~(shall)~~) must be determined annually by a rule adopted by the department of revenue and such rule (~~(shall)~~) must be published in the state register not later than January 1 of each year for use in that assessment year. The department of revenue determination may be appealed to the state board of tax appeals within thirty days after the date of publication by any owner of farm or agricultural land or the assessor of any county containing farm and agricultural land.

~~((3))~~ (c) The "component for property taxes" (~~(shall be)~~) is a figure obtained by dividing the assessed value of all property in the county into the property taxes levied within the county in the year preceding the assessment and multiplying the quotient obtained by one hundred.

**Sec. 311.** RCW 84.34.108 and 2009 c 513 s 2, 2009 c 354 s 3, 2009 c 255 s 2, and 2009 c 246 s 3 are each reenacted and amended to read as follows:

(1) When land has once been classified under this chapter, a notation of the classification (~~(shall)~~) must be made each year upon the assessment and tax rolls and the land (~~(shall)~~) must be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner (~~(shall)~~) does not, by itself, result in removal of classification. The notice of continuance (~~(shall)~~) must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes, applicable interest, and penalty calculated pursuant to subsection (4) of this section (~~(shall)~~) become due and payable by the seller or transferor at time of sale. The auditor (~~(shall)~~) may not accept an instrument of conveyance regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax, applicable interest, and penalty has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, (~~(shall)~~) must provide reasonable assistance to the assessor in making a determination whether the land

continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance (~~(shall)~~) must be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after the removal of all or a portion of the land from current use classification under subsection (1) of this section, the assessor (~~(shall)~~) must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

(4) Unless the removal is reversed on appeal, the assessor (~~(shall)~~) must revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification (~~(shall)~~) must be listed and taxes (~~(shall)~~) must be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty (~~(shall)~~) must be imposed, which (~~(shall be)~~) are due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax, applicable interest, and penalty. As soon as possible, the assessor (~~(shall)~~) must compute the amount of additional tax, applicable interest, and penalty and the treasurer (~~(shall)~~) must mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land," "farm and agricultural land," or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest (~~(shall)~~) must be equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty (~~(shall)~~) must be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty (~~(, shall)~~) become a lien on the land which (~~(shall attach)~~) attaches at the time the land is removed from classification under this chapter and (~~(shall)~~) have priority to and (~~(shall)~~) must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any additional

tax unpaid on ~~((its))~~ the due date ~~((shall thereupon become))~~ are delinquent as of the due date. From the date of delinquency until paid, interest ~~((shall))~~ must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section ~~((shall))~~ may not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section ~~((shall))~~ must be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(l)(i) The discovery that the land was classified under this chapter in error through no fault of the owner. For purposes of this subsection (6)(l), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of classification under this chapter or the failure of the assessor to remove the land from classification under this chapter.

(ii) For purposes of this subsection (6), the discovery that land was classified under this chapter in error through no fault of the owner is not the sole reason for removal of classification pursuant to subsection (1) of this section if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification under this chapter.

**Sec. 312.** RCW 84.34.300 and 1992 c 52 s 14 are each amended to read as follows:

(1) The legislature finds that farming, timber production, and the related agricultural and forest industries have historically been and currently are central factors in the economic and social lifeblood of the state; that it is a fundamental policy of the state to protect agricultural and timber lands as a major natural resource in order to maintain a source to supply a wide range of agricultural and forest products; and that the public interest in the protection and stimulation of farming, timber production, and the agricultural and forest industries is a basic element of enhancing the economic viability of this state. The legislature further finds that farmland and timber land in urbanizing areas are often subjected to high levels of property taxation and benefit assessment, and that such levels of taxation and assessment encourage and even force the removal of such lands from agricultural and forest uses. The legislature further finds that because of this level of taxation and assessment, such farmland and timber land in urbanizing areas are either converted to nonagricultural and nonforest uses when significant amounts of nearby nonagricultural and nonforest area could be suitably used for such nonagricultural and nonforest uses, or, much of this farmland and timber land is left in an unused state. The legislature further finds that with the approval by the voters of the Fifty-third Amendment to the state Constitution, and with the enactment of chapter 84.34 RCW, the owners of farmlands and timber lands were provided with an opportunity to have such land valued on the basis of its current use and not its "highest and best use" and that such current use valuation is one mechanism to protect agricultural and timber lands. The legislature further finds that despite this potential property tax reduction, farmlands and timber lands in urbanized areas are still subject to high levels of benefit assessments and continue to be removed from farm and forest uses.

(2) It is therefore the purpose of the legislature to establish, with the enactment of RCW 84.34.300 through 84.34.380, another mechanism to protect agricultural and timber land which creates an analogous system of relief from certain benefit assessments for farm and agricultural land and timber land. It is the intent of the legislature that special benefit assessments not be imposed for the availability of sanitary and/or storm sewerage service, or domestic water service, or for road construction and/or improvement purposes on farm and agricultural lands and timber lands which have been designated for current use classification as farm and agricultural lands or timber lands until such lands are withdrawn or removed from such classification or unless such lands benefit from or cause the need for the local improvement district.

(3) The legislature finds, and it is the intent of RCW 84.34.300 through 84.34.380 and 84.34.922, that special benefit assessments for the improvement or construction of sanitary and/or storm sewerage service, or domestic water service, or certain road construction do not generally benefit land which has

been classified as ~~((open space))~~ farm and agricultural land or timber land under the open space act, chapter 84.34 RCW, until such land is withdrawn or removed from such classification ~~((or such land is used for a more intense and nonagricultural use, or the land is no longer used as timber land))~~. The purpose of RCW 84.34.300 through 84.34.380 and 84.34.922 is to provide an exemption from certain special benefit assessments which do not benefit timber land or open space farm and agricultural land, and to provide the means for local governmental entities to recover such assessments in current dollar value in the event such land is no longer devoted to farming or timber production under chapter 84.34 RCW. Where the owner of such land chooses to make limited use of improvements related to special benefit assessments, RCW 84.34.300 through 84.34.380 provides the means for the partial assessment on open space timber and farmland to the extent the land is directly benefited by the improvement.

**Sec. 313.** RCW 84.34.320 and 1992 c 69 s 17 and 1992 c 52 s 16 are each reenacted and amended to read as follows:

(1) Any land classified as farm and agricultural land or timber land pursuant to chapter 84.34 RCW at the earlier of the times the legislative authority of a local government adopts a resolution, ordinance, or legislative act ~~((H))~~ to: (a) Create a local improvement district, in which such land is included or would have been included but for such classification~~((:))~~; ~~((2) to)~~ (b) approve or confirm a final special benefit assessment roll relating to a sanitary and/or storm sewerage system, domestic water supply and/or distribution system, or road construction and/or improvement, which roll would have included such land but for such classification, ~~((shall be))~~ is exempt from special benefit assessments or charges in lieu of assessment for such purposes as long as that land remains in such classification, except as otherwise provided in RCW 84.34.360.

(2) Whenever a local government creates a local improvement district, the levying, collection and enforcement of assessments shall be in the manner and subject to the same procedures and limitations as are provided pursuant to the law concerning the initiation and formation of local improvement districts for the particular local government. Notice of the creation of a local improvement district that includes farm and agricultural land or timber land ~~((shall))~~ must be filed with the county assessor and the legislative authority of the county in which such land is located. The assessor, upon receiving notice of the creation of such a local improvement district, ~~((shall))~~ must send a notice to the owner of the farm and agricultural land or timber land listed on the tax rolls of the applicable county treasurer of: ~~((H))~~ (a) The creation of the local improvement district; ~~((2))~~ (b) the exemption of that land from special benefit assessments; ~~((3))~~ (c) the fact that the farm and agricultural land or timber land may become subject to the special benefit assessments if the owner waives the exemption by filing a notarized document with the governing body of the local government creating the local improvement district before the confirmation of the final special benefit assessment roll; and ~~((4))~~ (d) the potential liability, pursuant to RCW 84.34.330, if the exemption is not waived and the land is subsequently removed or withdrawn from the farm and agricultural land or timber land ~~((status))~~ classification. When a local government approves and confirms a special benefit assessment roll, from which farm and agricultural land or timber land has been exempted pursuant to this section, it shall file a notice of such action with the assessor and the legislative authority of the county in which such land is located



and with the treasurer of that local government, which notice (~~(shall)~~ must describe the action taken, the type of improvement involved, the land exempted, and the amount of the special benefit assessment which would have been levied against the land if it had not been exempted. The filing of such notice with the assessor and the treasurer of that local government (~~(shall)~~ constitutes constructive notice to a purchaser or encumbrancer of the affected land, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded, that such exempt land is subject to the charges provided in RCW 84.34.330 and 84.34.340 if such land is withdrawn or removed from its current use classification as farm and agricultural land or timber land.

(3) The owner of the land exempted from special benefit assessments pursuant to this section may waive that exemption by filing a notarized document to that effect with the legislative authority of the local government upon receiving notice from said local government concerning the assessment roll hearing and before the local government confirms the final special benefit assessment roll. A copy of that waiver (~~(shall)~~ must be filed by the local government with the assessor, but the failure of such filing (~~(shall)~~ does not affect the waiver.

(4) Except to the extent provided in RCW 84.34.360, the local government (~~(shall have)~~ has no duty to furnish service from the improvement financed by the special benefit assessment to such exempted land.

**Sec. 314.** RCW 84.34.330 and 1992 c 52 s 17 are each amended to read as follows:

Whenever farm and agricultural land or timber land has once been exempted from special benefit assessments pursuant to RCW 84.34.320, any withdrawal or removal from classification (~~(or change in use from)~~ as farm and agricultural land or timber land under chapter 84.34 RCW (~~(shall)~~ results in the following:

(1) If the bonds used to fund the improvement in the local improvement district have not been completely retired, such land shall immediately become liable for: (a) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; plus (b) interest on the amount determined in (1)(a) of this section, compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity which created the local improvement district as provided in RCW 84.34.320 to the time the (~~(owner withdraws such)~~ land is withdrawn or removed from the exemption category provided by this chapter; or

(2) If the bonds used to fund the improvement in the local improvement district have been completely retired, such land shall immediately become liable for: (a) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; plus (b) interest on the amount determined in (2)(a) of this section compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity which created the local improvement district as provided in RCW 84.34.320, to the time the bonds used to fund the improvement have been retired; plus (c) interest on the total amount determined in (2)(a) and (b) of this section at a simple per annum rate equal to the average rate of inflation from the time the bonds used to fund the improvement have been retired to the time the (~~(owner~~

~~withdraws such lands))~~ land is withdrawn or removed from the exemption category provided by this chapter.

(3) The amount payable pursuant to this section shall become due on the date such land is withdrawn or removed from its ~~((current use))~~ farm and agricultural land or timber land classification and ~~((shall))~~ must be a lien on the land prior and superior to any other lien whatsoever except for the lien for general taxes, and shall be enforceable in the same manner as the collection of special benefit assessments are enforced by that local government.

**Sec. 315.** RCW 84.34.370 and 1992 c 52 s 20 are each amended to read as follows:

Whenever a portion of a parcel of land which was classified as farm and agricultural or timber land pursuant to this chapter is withdrawn or removed from classification ~~((or there is a change in use))~~, and such land has been exempted from any benefit assessments pursuant to RCW 84.34.320, the previously exempt benefit assessments ~~((shall))~~ become due on only that portion of the land which is withdrawn or ~~((changed))~~ removed.

**Sec. 316.** RCW 84.55.005 and 2007 sp.s. c 1 s 1 are each amended to read as follows:

~~((As used in this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce ~~((#))~~ by September 25th of the year before the taxes are payable;

(2) "Limit factor" means:

(a) For taxing districts with a population of less than ten thousand in the calendar year prior to the assessment year, one hundred one percent;

(b) For taxing districts for which a limit factor is authorized under RCW 84.55.0101, the lesser of the limit factor authorized under that section or one hundred one percent;

(c) For all other districts, the lesser of one hundred one percent or one hundred percent plus inflation; and

(3) "Regular property taxes" has the meaning given it in RCW 84.04.140.

**Sec. 317.** RCW 82.08.02061 and 2008 c 325 s 3 are each amended to read as follows:

The department must assess the implementation of the working families' tax exemption in a report to the legislature to identify administrative or resource issues that require legislative action. The department must submit the report to the finance committee of the house of representatives and the ways and means committee of the senate ~~((by December 1, 2012))~~ within eighteen months of the implementation of the program.

## Part IV

### Fixing Inadvertent Errors and Oversights in Prior Legislation

**Sec. 401.** RCW 82.04.250 and 2010 1st sp.s. c 23 s 509 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(~~((40))~~) (11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3)(a) Until July 1, 2024, upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

(b) A person reporting under the tax rate provided in this subsection (3) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 402.** RCW 82.04.250 and 2013 3rd sp.s. c 2 s 7 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3)(a) Until July 1, 2040, upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

(b) A person reporting under the tax rate provided in this subsection (3) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 403.** RCW 82.04.290 and 2013 c 23 s 314 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)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) 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.

(b) This subsection (2) 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 or her 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.

(3)(a) Until July 1, 2024, upon every person engaging within this state in the business of performing aerospace product development for others, as to such persons, the amount of tax with respect to such business shall be equal to the gross income of the business multiplied by a rate of 0.9 percent.

(b) A person reporting under the tax rate provided in this subsection (3) must file a complete annual report with the department under RCW 82.32.534.

(c) "Aerospace product development" has the meaning as provided in RCW 82.04.4461.

**Sec. 404.** RCW 82.04.290 and 2013 3rd sp.s. c 2 s 8 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 is equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) of this section; as to such persons the amount of tax on account of such activities is equal to the gross income of the business multiplied by the rate of 1.5 percent.

(b) This subsection (2) 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 or her principal or supplier to be used for informational, educational, and promotional purposes is not considered a part of the agent's remuneration or commission and is not subject to taxation under this section.

(3)(a) Until July 1, 2040, upon every person engaging within this state in the business of performing aerospace product development for others, as to such persons, the amount of tax with respect to such business is equal to the gross income of the business multiplied by a rate of 0.9 percent.

(b) A person reporting under the tax rate provided in this subsection (3) must file a complete annual report with the department under RCW 82.32.534.

(c) "Aerospace product development" has the meaning as provided in RCW 82.04.4461.

**Sec. 405.** RCW 82.08.9651 and 2010 c 114 s 124 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

~~(2) ((A person claiming the exemption under this section must file a complete annual report with the department under RCW 82.32.534.))~~ (a) Except as provided under (b) of this subsection (2), a person claiming the exemption under this section must file a complete annual survey with the department under RCW 82.32.585.

(b) A person claiming the exemption under this section and who is required to file a complete annual report with the department under RCW 82.32.534 as a result of claiming the tax preference provided by RCW 82.04.2404 is not also required to file a complete annual survey under RCW 82.32.585.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

~~((3))~~ (4) This section expires December 1, 2018.

**Sec. 406.** RCW 82.12.9651 and 2010 c 114 s 130 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

~~(2) ((A person claiming the exemption under this section must file a complete annual report with the department under RCW 82.32.534.))~~ (a) Except as provided under (b) of this subsection (2), a person claiming the exemption under this section must file a complete annual survey with the department under RCW 82.32.585.

(b) A person claiming the exemption under this section and who is required to file a complete annual report with the department under RCW 82.32.534 as a

result of claiming the tax preference provided by RCW 82.04.2404 is not also required to file a complete annual survey under RCW 82.32.585.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

((3)) (4) This section expires December 1, 2018.

**Sec. 407.** RCW 84.40.038 and 2011 c 84 s 1 are each amended to read as follows:

(1) The owner or person responsible for payment of taxes on any property may petition the county board of equalization for a change in the assessed valuation placed upon such property by the county assessor or for any other reason specifically authorized by statute. Such petition must be made on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed may not be considered by the board. The petition must be filed with the board;

(a) On or before July 1st of the year of the assessment or determination(-);

(b) Within thirty days after the date ((and)) the assessment, value change notice, or other notice ((has been)) was mailed(-);

(c) Within thirty days after the date that the assessor electronically (i) transmitted the assessment, value change notice, or other notice, or (ii) notified the owner or person responsible for payment of taxes that the assessment, value change notice, or other notice was available to be accessed by the owner or other person; or

(d) Within a time limit of up to sixty days adopted by the county legislative authority, whichever is later. If a county legislative authority sets a time limit, the authority may not change the limit for three years from the adoption of the limit.

(2) The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause for the late filing. However, the board of equalization must waive the filing deadline for the circumstance described under (f) of this subsection if the petition is filed within a reasonable time after the filing deadline. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

(a) Death or serious illness of the taxpayer or his or her immediate family;

(b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;

(c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;

(d) Natural disaster such as flood or earthquake;

(e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service;

(f) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:

(i) The taxpayer's property value did not change from the previous year; and

(ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year; or

(g) Other circumstances as the department may provide by rule.

(3) The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization must consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefor, ~~((shall))~~ must be provided to the affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board.

**Sec. 408.** RCW 84.40.175 and 2013 c 235 s 2 are each amended to read as follows:

At the time of making the assessment of real property, the assessor must enter each description of property exempt under the provisions of chapter 84.36 RCW, and value and list the same in the manner and subject to the same rule as the assessor is required to assess all other property, designating in each case to whom such property belongs. The valuation requirements of this section do not apply to publicly owned property exempt from taxation under provisions of RCW 84.36.010. However, when the exempt status of such property no longer applies as a result of a sale or change in use, the assessor must value and list such property as of the January 1st assessment date for the year of the status change. The owner or person responsible for payment of taxes may thereafter petition the county board of equalization for a change in the assessed value in accordance with the timing and procedures set forth in RCW 84.40.038.

### **Part V Clarifying Ride Sharing Tax Preferences**

**Sec. 501.** RCW 46.74.010 and 2009 c 557 s 5 are each reenacted and amended to read as follows:

The definitions ~~((set forth))~~ in this section ~~((shall))~~ apply throughout this chapter ~~((;))~~ unless the context clearly indicates otherwise.

(1) "Commuter ride sharing" means a car pool or van pool arrangement whereby one or more fixed groups not exceeding fifteen persons each including the drivers, and (a) not fewer than five persons including the drivers, or (b) not fewer than four persons including the drivers where at least two of those persons are confined to wheelchairs when riding, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, each group in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institution.

(2) "Flexible commuter ride sharing" means a car pool or van pool arrangement whereby a group of at least two but not exceeding fifteen persons including the driver is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider

equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution.

(3) "Persons with special transportation needs" (~~means those persons defined~~) has the same meaning as provided in RCW 81.66.010(~~((4))~~).

(4) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, as defined in RCW 81.66.010(~~((3))~~), serving persons with special needs, in a passenger motor vehicle as defined by the department to include small buses, cutaways, and modified vans not more than twenty-eight feet long: PROVIDED, That the driver need not be a person with special transportation needs.

(5) "Ride-sharing operator" means the person, entity, or concern, not necessarily the driver, responsible for the existence and continuance of commuter ride sharing, flexible commuter ride sharing, or ride sharing for persons with special transportation needs. The term "ride-sharing operator" includes but is not limited to an employer, an employer's agent, an employer-organized association, a state agency, a county, a city, a public transportation benefit area, or any other political subdivision that owns or leases a ride-sharing vehicle.

(6) "Ride-sharing promotional activities" means those activities involved in forming a commuter ride-sharing arrangement or a flexible commuter ride-sharing arrangement, including but not limited to receiving information from existing and prospective ride-sharing participants, sharing that information with other existing and prospective ride-sharing participants, matching those persons with other existing or prospective ride-sharing participants, and making assignments of persons to ride-sharing arrangements.

**Sec. 502.** RCW 82.44.015 and 2010 c 161 s 909 are each amended to read as follows:

(1) Passenger motor vehicles used primarily for commuter ride sharing and ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, are not subject to the motor vehicle excise tax authorized under this chapter if the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase.

(2) To qualify for the motor vehicle excise tax exemption for commuter ride-sharing vehicles, passenger motor vehicles must:

- (a) Have a seating capacity of five or six passengers, including the driver;
- (b) Be used for commuter ride sharing;
- (c) Be operated either within:
  - (i) The state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW; or
  - (ii) In other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan; and
- (d) Meet at least one of the following conditions:
  - (i) The vehicle must be operated by a public transportation agency for the general public;



(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program.

(3) The registered owner of a passenger motor vehicle described in subsection (2) of this section:

(a) Shall notify the department upon the termination of the primary use of the vehicle in commuter ride sharing or ride sharing for persons with special transportation needs; and

(b) Is liable for the motor vehicle excise tax imposed under this chapter, prorated on the remaining months for which the vehicle is registered.

**Sec. 503.** RCW 82.08.0287 and 2001 c 320 s 4 are each amended to read as follows:

(1) The tax imposed by this chapter (~~shall~~) does not apply to sales of passenger motor vehicles which are to be used primarily for commuter ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, if the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase.

(2) To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (~~(a)~~) (a) The vehicle must be operated by a public transportation agency for the general public; or (~~(b)~~) (b) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (~~(c)~~) (c) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program.

**Sec. 504.** RCW 82.12.0282 and 2001 c 320 s 5 are each amended to read as follows:

(1) The tax imposed by this chapter (~~shall~~) does not apply with respect to the use of passenger motor vehicles used (~~as ride-sharing vehicles by not less than five persons, including the driver, with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride sharing, as defined in RCW 46.74.010, by not less than four persons including the driver when at least two of those persons are confined to wheelchairs when riding, or passenger motor vehicles where the primary usage is for~~) primarily for commuter ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, if the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning with the date of first use.

(2) To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (~~(1)~~) (a) The vehicle must be operated by a public transportation agency for the general public; or (~~(2)~~) (b) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (~~(3)~~) (c) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program.

## Part VI

### Simplifying Exemption Certificate Requirements for Farmers

**Sec. 601.** RCW 82.08.855 and 2007 c 332 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to the sale to an eligible farmer of:

- (a) Replacement parts for qualifying farm machinery and equipment;
- (b) Labor and services rendered in respect to the installing of replacement parts; and
- (c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller

makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section.

~~(3)(a) A ((person)) purchaser claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. ((An exemption is available only when the buyer provides the seller with an exemption certificate issued by the department containing such information as the department requires. The exemption certificate shall be in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.~~

~~(b) The department shall provide an exemption certificate to an eligible farmer or renew an exemption certificate, upon application by that eligible farmer. The application must be in a form and manner prescribed by the department and shall contain the following information as required by the department:~~

~~(i) The name and address of the applicant;~~

~~(ii) The uniform business identifier or tax reporting account number of the applicant, if the applicant is required to be registered with the department;~~

~~(iii) The type of farming engaged in;~~

~~(iv) Either a copy of the applicant's information as provided in (b)(iv)(A) of this subsection or a declaration as provided in (b)(iv)(B) of this subsection, as elected by the applicant:~~

~~(A) A copy of the applicant's Schedule F of Form 1040, Form 1120, or other applicable form filed with the internal revenue service indicating the applicant's gross sales or harvested value of agricultural products for the tax year covered by the return. If the applicant has not filed a federal income tax return for the prior tax year or is not required to file a federal income tax return, the applicant shall provide copies of other documents establishing the amount of the applicant's gross sales or harvested value of agricultural products for the tax year immediately preceding the year in which an application for exemption under this section is submitted to the department;~~

~~(B) A declaration signed under penalty of perjury as provided in RCW 9A.72.085 that the applicant is an eligible farmer as defined in subsection (4)(b) of this section. Any person who knowingly makes a materially false statement on an application submitted to the department under the provisions of this section shall be guilty of perjury in the second degree under chapter 9A.72 RCW. In addition, the person is liable for payment of any taxes for which an exemption under this section was claimed, with interest at the rate provided for delinquent taxes, retroactively to the date the exemption was claimed, and penalties as provided under chapter 82.32 RCW;~~

~~(v) The name of the individual authorized to sign the certificate, printed in a legible fashion;~~

~~(vi) The signature of the authorized individual; and~~

~~(vii) Other information the department may require to verify the applicant's eligibility for the exemption.~~

~~(e)(i) Except as otherwise provided in this section, exemption certificates take effect on the date issued by the department and are not transferable and are valid for the remainder of the calendar year in which the certificate is issued and the following four calendar years. The department shall attempt to notify holders of exemption certificates of the impending expiration of the certificate at least sixty days before the certificate expires and shall provide an application for renewal of the certificate.~~

~~(ii) When a certificate holder merely changes identity or form of ownership of an entity and there is no change in beneficial ownership, the exemption certificate shall be transferred to the new entity upon written notice to the department by the transferor or transferee.~~

~~(d)(i) A person who is an eligible farmer as defined in subsection (4)(b)(iii) of this section shall be issued a conditional exemption certificate. The exemption certificate is) Sellers making tax-exempt sales under this section must obtain an exemption certificate from the purchaser in a form and manner prescribed by the department. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the certificate or the data elements for the seller's files.~~

~~(b)(i) For a person who is an eligible farmer as defined in subsection (4)(b)(iv) of this section, the exemption is conditioned upon:~~

(A) The eligible farmer having gross sales or a harvested value of agricultural products grown, raised, or produced by that person of at least ten thousand dollars in the first full tax year in which the person engages in business as a farmer; or

(B) The eligible farmer, during the first full tax year in which that person engages in business as a farmer, growing, raising, or producing agricultural products having an estimated value at any time during that year of at least ten thousand dollars, if the person will not sell or harvest an agricultural product during the first full tax year in which the person engages in business as a farmer.

~~(ii) If a person fails to meet the condition provided in ((d)(i)(A) or (B) of this subsection, the department shall revoke the exemption certificate. The department shall notify the person in writing of the revocation and the person's responsibility, and due date, for payment of any taxes for which an exemption under this section was claimed) (b)(i)(A) or (B) of this subsection, the person must repay any taxes exempted under this section. Any taxes for which an exemption under this section was claimed ((shall be) are due and payable to the department within thirty days of the ((date of the notice revoking the certificate)) end of the first full tax year in which the person engages in business as a farmer. The department ((shall)) must assess interest on the taxes for which the exemption was claimed((- Interest shall be assessed at the rate provided for delinquent excise taxes under)) as provided in chapter 82.32 RCW, retroactively to the date the exemption was claimed, and ((shall)) accrues until the taxes for which the exemption was claimed are paid. Penalties ((shall)) may not be imposed on any tax required to be paid under this subsection (3)((d)) (b)(ii) if full payment is received by the due date. ((Nothing in this subsection (3)(d) prohibits a person from reapplying for an exemption certificate.))~~

~~(4) The definitions in this subsection apply ((to)) throughout this section unless the context clearly requires otherwise.~~

(a) "Agricultural products" has the meaning provided in RCW 82.04.213.

(b) "Eligible farmer" means:

(i) A farmer as defined in RCW 82.04.213 whose gross sales or harvested value of agricultural products grown, raised, or produced by that person ~~((is))~~ was at least ten thousand dollars for the ~~((tax year))~~ immediately preceding ~~((the year in which an application for exemption under this section is submitted to the department;~~

~~(ii) The transferee of an exemption certificate under subsection (3)(c)(ii) of this section where the transferred certificate expires before the transferee engages in farming operations for a full tax year, if the combined gross sales or harvested value of agricultural products that the transferor and transferee have grown, raised, or produced meet the requirements of (b)(i) of this subsection;~~

~~(iii) A farmer as defined in RCW 82.04.213, who does not meet the definition of "eligible farmer" in (b)(i) or (ii) of this subsection, and who did not engage in farming for the entire tax year immediately preceding the year in which application for exemption under this section is submitted to the department)) tax year;~~

(ii) A farmer as defined in RCW 82.04.213 whose agricultural products had an estimated value of at least ten thousand dollars for the immediately preceding tax year, if the person did not sell or harvest an agricultural product during that year;

(iii) A farmer as defined in RCW 82.04.213 who has merely changed identity or the form of ownership of an entity that was an eligible farmer, where there was no change in beneficial ownership, and the combined gross sales, harvested value, or estimated value of agricultural products by both entities met the requirements of (b)(i) or (ii) of this subsection for the immediately preceding tax year;

(iv) A farmer as defined in RCW 82.04.213, who does not meet the definition of "eligible farmer" in (b)(i), (ii), or (iii) of this subsection, and who did not engage in farming for the entire immediately preceding tax year, because the farmer is either new to farming or newly returned to farming; or

~~((+))~~ (v) Anyone who otherwise meets the definition of "eligible farmer" in this subsection except that they are not a "person" as defined in RCW 82.04.030.

(c) "Farm vehicle" has the same meaning as in RCW 46.04.181.

(d) "Harvested value" means the number of units of the agricultural product that were grown, raised, or produced, multiplied by the average sales price of the agricultural product. For purposes of this subsection (4)(d), "average sales price" means the average price per unit of agricultural product received by farmers in this state as reported by the United States department of agriculture's national agricultural statistics service for the twelve-month period that coincides with, or that ends closest to, the end of the relevant tax year, regardless of whether the prices are subject to revision. If the price per unit of an agricultural product received by farmers in this state is not available from the national agricultural statistics service, average sales price may be determined by using the average price per unit of agricultural product received by farmers in this state as reported by a recognized authority for the agricultural product.

(e) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or

producing agricultural products. "Qualifying farm machinery and equipment" does not include:

(i) Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles, and other farm implements. For purposes of this subsection (4)(e)(i), "farm implement" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

(ii) Aircraft;

(iii) Hand tools and hand-powered tools; and

(iv) Property with a useful life of less than one year.

(f)(i) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment.

(ii) Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined in (f)(i) of this subsection or making repairs as described in subsection (1)(c) of this section.

(g) "Tax year" means the period for which a person files its federal income tax return, irrespective of whether the period represents a calendar year, fiscal year, or some other consecutive twelve-month period. If a person is not required to file a federal income tax return, "tax year" means a calendar year.

**Sec. 602.** RCW 82.08.890 and 2010 1st sp.s. c 23 s 601 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Labor and services rendered in respect to repairing, cleaning, altering, or improving of qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the sale of or charge made for: (A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2) The exemption provided in subsection (1) of this section applies to sales made after the livestock nutrient management plan is: (a) Certified under chapter 90.64 RCW; (b) approved as part of the permit issued under chapter 90.48 RCW; or (c) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) ~~((The department of revenue must provide an exemption certificate to an eligible person upon application by that person.))~~ The department of

agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue upon request. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility. ~~((The application must be in a form and manner prescribed by the department and must contain information regarding the location of the dairy or animal feeding operation and other information the department may require.))~~

(b) A ~~((person))~~ purchaser claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. ~~((The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate.))~~ Sellers making tax-exempt sales under this section must obtain an exemption certificate from the purchaser in a form and manner prescribed by the department. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the certificate or the data elements for the seller's files.

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person: (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who ~~((possesses an exemption certificate))~~ qualifies for the exemption provided under RCW 82.08.855.

(d) "Handling and treatment of livestock manure" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

(f) "Qualifying livestock nutrient management equipment" means the following tangible personal property for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers; (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler irrigation systems; (vii) lagoon and pond liners and floating covers; (viii) loaders; (ix) manure composting devices; (x)

manure spreaders; (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry house washers; (xvi) poultry litter saver machines; (xvii) pipes; (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

(g) "Qualifying livestock nutrient management facilities" means the following structures and facilities for exclusive use in the handling and treatment of livestock manure: (i) Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks; and (iv) structures used solely for the dry storage of manure, including roofed stacking facilities.

(5) The exemption under this section does not apply to sales made from July 1, 2010, through June 30, 2013.

**Sec. 603.** RCW 82.12.855 and 2007 c 332 s 2 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use by an eligible farmer of:

(a) Replacement parts for qualifying farm machinery and equipment;

(b) Labor and services rendered in respect to the installing of replacement parts; and

(c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes a component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section.

(3) The definitions and recordkeeping requirements in RCW 82.08.855(~~other than the exemption certificate requirement~~) apply to this section.

(4) If a person is an eligible farmer as defined in RCW 82.08.855(4)(b)(~~(iii)~~) (iv) who cannot prove income because the person is new to farming or newly returned to farming, the exemption under this section will apply only if one of the conditions in RCW 82.08.855(3)(~~(d)~~) (b)(i)(A) or (B) is met. If ~~(the)~~ neither of those conditions are ~~(not)~~ met, any taxes for which an exemption under this section was claimed and interest on such taxes must be paid. Amounts due under this subsection shall be in accordance with RCW 82.08.855(3)(~~(d)~~) (b)(ii)(~~except that the due date for payment is January 31st of the year immediately following the first full tax year in which the person engaged in business as a farmer~~)).



(5) Except as provided in subsection (4) of this section, the department ~~((shall))~~ may not assess the tax imposed under this chapter against a person who no longer qualifies as an eligible farmer with respect to the use of any articles or services exempt under subsection (1) of this section, if the person was an eligible farmer when the person first put the articles or services to use in this state.

**Sec. 604.** RCW 82.12.890 and 2010 1st sp.s. c 23 s 602 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use by an eligible person of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the use of tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to the use of tangible personal property and labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) ~~((The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section.))~~ The definitions and recordkeeping requirements in RCW 82.08.890 apply to this section.

(4) The exemption under this section does not apply to the use of tangible personal property and services if first use of the property or services in this state occurs from July 1, 2010, through June 30, 2013.

**NEW SECTION. Sec. 605.** Sections 401 and 403 of this act expire on the date that sections 402 and 404 of this act take effect.

Passed by the Senate February 18, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 98

[Engrossed Substitute Senate Bill 6388]

### FOOD REGULATION—DIRECT SELLER LICENSES

AN ACT Relating to pass-through food distributors; amending RCW 69.07.120; adding a new section to chapter 69.04 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 the availability of affordable, fresh, and nourishing foods is essential for individuals to maintain a healthy lifestyle. The legislature also finds that new methods of purchasing and delivering fresh, nourishing foods are emerging and lowering the costs of these foods. The legislature further finds that some of the new business models for purchasing and delivering fresh, nourishing foods are being inappropriately classified as food service establishments. Therefore, it is the intent of the legislature to establish a direct seller license for businesses that sell and collect payment only through a web site for prepackaged foods obtained from a food processor either licensed or inspected, or both, by a state or federal regulatory agency and that deliver the food directly to consumers without any interim storage.

**NEW SECTION. Sec. 2.** A new section is added to chapter 69.04 RCW to read as follows:

(1) The department shall issue a license to operate as a direct seller to any entity that:

- (a) Submits a completed application on forms approved by the department;
- (b) Provides the department with a list of all leased, rented, or owned vehicles, other than vehicles that are rented for less than forty-five days, used by the applicant's business to deliver food;
- (c) Maintains all records of vehicles that are rented for less than forty-five days for at least twelve months following the termination of the rental period;
- (d) Maintains food temperature logs or uses a device to monitor the temperature of the packages in real time for all food while in transport; and
- (e) Submits all appropriate fees to the department.

(2) The department shall develop, by rule, an annual license and renewal fee to defray the costs of administering the licensing and inspection program created by this section. All moneys received by the department under the provisions of this section must be paid into the food processing inspection account created in RCW 69.07.120 and must be used solely to carry out the provisions of this section.

(3)(a) A licensed direct seller is required to protect food from contamination while in transport. Food must be transported under conditions that protect food against physical, chemical, and microbial contamination, as well as against deterioration of the food and its container.

(b) Compliance with this subsection (3) requires, but is not limited to, the separation of raw materials in such a fashion that they avoid cross-contamination of other food products, particularly ready-to-eat food. An example of this principle includes ensuring that, during the transport of raw fish and seafood, meat, poultry, or other food which inherently contains pathogenic and spoilage microorganisms, soil, or other foreign material, the raw materials may not come into direct contact with other food in the same container or in any other cross-contaminating circumstance.

(4) In the event of a food recall or when required by the department, a federal, state, or local health authority in response to a food borne illness outbreak, a licensed direct seller shall use its client listserv to notify customers of the recall and any other relevant information.

(5) In the implementation of this section, the department shall:

(a) Conduct inspections of vehicles, food handling areas, refrigeration equipment, and product packaging used by a licensed direct seller;

(b) Conduct audits of temperature logs and other food handling records as appropriate;

(c) Investigate any complaints against a licensed direct seller for the failure to maintain food safety; and

(d) Adopt rules, in consultation with the department of health and local health jurisdictions, necessary to administer and enforce the program consistent with federal regulations.

(6) Direct sellers that have a license from the department under this section are exempt from the permitting requirements of food service rules adopted by the state board of health and any local health jurisdiction.

(7) The director may deny, suspend, or revoke any license provided under this section if the director determines that an applicant or licensee has committed any of the following:

(a) Refused, neglected, or failed to comply with the provisions of this section, the rules and regulations adopted under this section, or any order of the director;

(b) Refused, neglected, or failed to keep and maintain records required by this chapter, or refused the department access to such records;

(c) Refused the department access to any portion or area of vehicles, food handling areas, or any other areas or facilities housing equipment or product packaging used by the direct retailer [direct seller] in the course of performing business responsibilities; or

(d) Failed to submit an application for a license meeting the requirements of this section or failed to pay the appropriate annual license or renewal fee.

(8) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Department" means the department of agriculture.

(b) "Direct seller" means an entity that receives prepackaged food from a food processor that is either licensed or inspected, or both, by a state or federal regulatory agency or the department and that delivers the food directly to consumers who only placed and paid for an order on the entity's web site, as long as:

(i) The food is delivered by the entity without opening the packaging and without dividing it into smaller packages;

(ii) There is no interim storage by the entity; and

(iii) The food is delivered by means of vehicles that are equipped with either refrigeration or freezer units, or both, and that meet the requirements of rules authorized by this chapter.

**Sec. 3.** RCW 69.07.120 and 2011 c 281 s 12 are each amended to read as follows:

All moneys received by the department under the provisions of this chapter, section 2 of this act, and chapter 69.22 RCW shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter, section 2 of this act, and chapters 69.22 and 69.04 RCW.

Passed by the Senate March 11, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 99

[Senate Bill 6405]

### PROPERTY TAXES—EXEMPTIONS—NONPROFIT ORGANIZATIONS

AN ACT Relating to providing greater consistency in how nonprofit tax-exempt property may be used without jeopardizing the property's tax-exempt status; amending RCW 84.36.020, 84.36.020, 84.36.030, 84.36.032, 84.36.035, 84.36.037, 84.36.037, 84.36.050, 84.36.060, 84.36.260, 84.36.264, and 84.36.805; creating new sections; 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 finds that tax-exempt property of nonprofit organizations may generally be used for nonexempt purposes on a limited basis. However, the legislature further finds that these allowable nonexempt uses, and the conditions applicable to such uses, vary depending on the specific exemption. The legislature further finds that these inconsistencies create inequities and confusion for nonprofits, leads to piecemeal legislation, and complicates the administration of nonprofit property tax exemptions. Therefore, this act is intended to address these problems by providing greater consistency with respect to how nonprofits may use their tax-exempt property for nonexempt purposes. This act is not intended to place any additional limits or restrictions on any existing statutorily authorized nonexempt uses of exempt property of nonprofit organizations.

**Sec. 2.** RCW 84.36.020 and 2010 c 186 s 2 are each amended to read as follows:

The following real and personal property is exempt from taxation:

(1) All lands, buildings, and personal property required for necessary administration and maintenance, used, or to the extent used, exclusively for public burying grounds or cemeteries without discrimination as to race, color, national origin or ancestry;

(2)(a) All churches, personal property, and the ground, not exceeding five acres in area, upon which a church of any nonprofit recognized religious denomination is or will be built, together with a parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property. The area exempted in any case includes all ground covered by the church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property and the structures and ground necessary for street access, parking, light, and ventilation, but the area of unoccupied ground exempted in such cases, in connection with church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property, does not exceed the equivalent of one hundred twenty by one hundred twenty feet except where additional unoccupied land may be required to conform with state or local codes, zoning, or licensing requirements. The parsonage and convent need not be on land

contiguous to the church property. Except as otherwise provided in this subsection, to be exempt the property must be wholly used for church purposes.

(b) If the rental income or donations, if applicable, are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented, the exemption provided by this subsection (2) is not nullified by:

(i) The loan or rental of property otherwise exempt under this subsection to a nonprofit organization, association, or corporation, or school ((for use for)) **to conduct** an eleemosynary activity or ((for use for)) **to conduct** activities related to a farmers market((, does not nullify the exemption provided in this subsection if the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property)). However, activities related to a farmers market may not occur on the property more than fifty-three days each assessment year. For the purposes of this section, "farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170;

(ii) The rental or use of the property by any individual, group, or entity, where such rental or use is not otherwise authorized by this subsection (2), for not more than fifty days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations provided in this subsection (2)(b)(ii) do not include days used for setup and takedown activities preceding or following a meeting or other event by an individual, group, or entity using the property as provided in this subsection (2)(b)(ii); or

(iii) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

**Sec. 3.** RCW 84.36.020 and 1994 c 124 s 16 are each amended to read as follows:

The following real and personal property shall be exempt from taxation:

(1) All lands, buildings, and personal property required for necessary administration and maintenance, used, or to the extent used, exclusively for public burying grounds or cemeteries without discrimination as to race, color, national origin or ancestry;

(2)(a) All churches, personal property, and the ground, not exceeding five acres in area, upon which a church of any nonprofit recognized religious denomination is or ((shall)) **must** be built, together with a parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property. The area exempted ((shall)) **must** in any case include all ground covered by the church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property and the structures and ground necessary for street access, parking, light, and ventilation, but the area of unoccupied ground exempted in such cases, in connection with church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property, shall not exceed the equivalent of one hundred twenty by one hundred twenty feet except where additional unoccupied land may be required to conform with state or local codes, zoning, or licensing requirements. The parsonage and convent need not be on land contiguous to the church property. Except as otherwise provided in this

subsection, to be exempt the property must be wholly used for church purposes(= PROVIDED, That).

(b) If the rental income or donations, if applicable, are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented, the exemption provided by this subsection (2) is not nullified by:

(i) The loan or rental of property otherwise exempt under this ((paragraph)) subsection (2) to a nonprofit organization, association, or corporation, or school ((for use for)) to conduct an eleemosynary activity ((shall not nullify the exemption provided in this paragraph if the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property));

(ii) The rental or use of the property by any individual, group, or entity, where such rental or use is not otherwise authorized by this subsection (2), for not more than fifty days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations provided in this subsection (2)(b)(ii) do not include days during which setup and takedown activities take place immediately preceding or following a meeting or other event by an individual, group, or entity using the property as provided in this subsection (2)(b)(ii); or

(iii) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

**Sec. 4.** RCW 84.36.030 and 2006 c 305 s 1 are each amended to read as follows:

The following real and personal property ~~((shall be))~~ is exempt from taxation:

(1)(a) Property owned by nonprofit organizations or associations, organized and conducted for nonsectarian purposes, which shall be used for character-building, benevolent, protective or rehabilitative social services directed at persons of all ages.

(b) The sale of donated merchandise ~~((shall))~~ is not ~~((be))~~ considered a ~~((commercial))~~ nonexempt use of the property under this section if the proceeds are devoted to the furtherance of the purposes of the selling organization or association as specified in this subsection (1).

~~((c) In a county with a population of less than twenty thousand, the rental or use of property, owned by a nonprofit organization or association described in (a) of this subsection, by a person, group, or organization in one of the following ways shall not nullify the exemption:~~

~~(i) The property may be rented or used for pecuniary gain or for business activities or by individuals, groups, and organizations for private purposes if the rental or use:~~

~~(A) Does not exceed fifteen days each assessment year;~~

~~(B) No comparable private for-profit facility exists within ten miles of the property that could be used for the same purpose for which the property is loaned or rented; and~~

~~(C) All income from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or for exempt purposes; or~~

~~(ii) The property is rented or used by a nonprofit community group or other nonprofit organization that might not qualify for exemption if it owned the property as long as the rental or use of the property:~~

~~(A) Does not exceed fifteen days each assessment year;~~

~~(B) Does not result in pecuniary gain;~~

~~(C) Does not involve business activities;~~

~~(D) Is always for the general public good; and~~

~~(E) All income from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or for exempt purposes.)~~

(2) Property owned by any nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches or their qualified representatives, which is utilized as a camp facility if used for organized and supervised recreational activities and church purposes as related to such camp facilities. The exemption provided by this paragraph shall apply to a maximum of two hundred acres of any such camp as selected by the church, including buildings and other improvements thereon.

(3) Property, including buildings and improvements required for the maintenance and safeguarding of such property, owned by nonprofit organizations or associations engaged in character building of boys and girls under eighteen years of age, and used for such purposes and uses, provided such purposes and uses are for the general public good: PROVIDED, That if existing charters provide that organizations or associations, which would otherwise qualify under the provisions of this paragraph, serve boys and girls up to the age of twenty-one years, then such organizations or associations shall be deemed qualified pursuant to this section.

~~(4)((a))~~ Property owned by all organizations and societies of veterans of any war of the United States, recognized as such by the department of defense, which shall have national charters, and which shall have for their general purposes and objects the preservation of the memories and associations incident to their war service and the consecration of the efforts of their members to mutual helpfulness and to patriotic and community service to state and nation. To be exempt such property must be used in such manner as may be reasonably necessary to carry out the purposes and objects of such societies.

~~((b) The use of the property for pecuniary gain or for business activities, except as provided in this subsection (4), nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified by:~~

~~(i) The collection of rent or donations if the amount is reasonable and does not exceed maintenance and operation expenses.~~

~~(ii) Fund-raising activities conducted by a nonprofit organization.~~

~~(iii) The use of the property for pecuniary gain for periods of not more than fifteen days in a year.~~

~~(e) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a~~

~~pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.))~~

(5) Property owned by all corporations, incorporated under any act of congress, whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(6) Property owned by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans.

(7) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as otherwise provided in this section or RCW 84.36.805.

(8) For the purposes of this section, "general public good" means members of the community derive a benefit from the rental or use of the property by the nonprofit community group or organization.

**Sec. 5.** RCW 84.36.032 and 1975 1st ex.s. c 291 s 13 are each amended to read as follows:

The real and personal property of the administrative offices of nonprofit recognized religious organizations shall be exempt to the extent that the property is used for the administration of the religious programs of the organization and such other programs as would be exempt under RCW 84.36.020 and 84.36.030 as now or hereafter amended. The provisions of RCW 84.36.020(2)(b) apply to this section.

**Sec. 6.** RCW 84.36.035 and 2004 c 82 s 4 are each amended to read as follows:

(1) The following property (~~shall be~~) is 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 bank, a qualifying tissue bank, or a qualifying blood and tissue bank, or in the administration of 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.

(3) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided in RCW 84.36.805.

**Sec. 7.** RCW 84.36.037 and 2010 c 186 s 1 are each amended to read as follows:

(1) Real or personal property owned by a nonprofit organization, association, or corporation in connection with the operation of a public assembly hall or meeting place is exempt from taxation. The area exempt under this section includes the building or buildings, the land under the buildings, and an additional area necessary for parking, not exceeding a total of one acre. When property for which exemption is sought is essentially unimproved except for restroom facilities and structures and this property has been used primarily for



annual community celebration events for at least ten years, the exempt property ~~((shall))~~ may not exceed twenty-nine acres.

(2) To qualify for this exemption the property must be used exclusively for public gatherings and must be available to all organizations or persons desiring to use the property, but the owner may impose conditions and restrictions which are necessary for the safekeeping of the property and promote the purposes of this exemption. Membership shall not be a prerequisite for the use of the property.

(3) The use of the property for pecuniary gain or for business activities, except as provided in this section and RCW 84.36.805, nullifies the exemption otherwise available for the property for the assessment year. If all income received from rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes, the exemption is not nullified as provided by RCW 84.36.805 or by:

~~(a) ((The collection of rent or donations if all funds collected are used for capital improvements to the exempt property, maintenance and operation of the exempt property, or for exempt purposes:~~

~~(b) Fund raising activities conducted by a nonprofit organization.~~

~~(c)(i) Except as provided in (c)(ii) of this subsection, the use of the property for pecuniary gain, for business activities for periods of not more than fifteen days each assessment year so long as all income received from rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or for exempt purposes.~~

~~((ii)) The use of the property ((for pecuniary gain or for business activities if the property is used for activities related)) to conduct a qualifying farmers market, as defined in RCW 66.24.170, for not more than fifty-three days each assessment year, ((and all income received from rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes.~~

~~((d)) if the rental income or donations, if any, are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; or~~

~~(b) In a county with a population of less than twenty thousand, the use of the property to promote the following business activities, if the rental income or donations, if any, are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented: Dance lessons, art classes, or music lessons.~~

~~((e) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.))~~

(4) The department of revenue must narrowly construe this exemption.

**Sec. 8.** RCW 84.36.037 and 2006 c 305 s 3 are each amended to read as follows:

(1) Real or personal property owned by a nonprofit organization, association, or corporation in connection with the operation of a public assembly hall or meeting place is exempt from taxation. The area exempt under this section includes the building or buildings, the land under the buildings, and an

additional area necessary for parking, not exceeding a total of one acre. When property for which exemption is sought is essentially unimproved except for restroom facilities and structures and this property has been used primarily for annual community celebration events for at least ten years, the exempt property shall not exceed twenty-nine acres.

(2) To qualify for this exemption the property must be used exclusively for public gatherings and be available to all organizations or persons desiring to use the property, but the owner may impose conditions and restrictions which are necessary for the safekeeping of the property and promote the purposes of this exemption. Membership shall not be a prerequisite for the use of the property.

(3) The use of the property for pecuniary gain or for business activities, except as provided in this section and RCW 84.36.805, nullifies the exemption otherwise available for the property for the assessment year. If all income received from rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes, the exemption is not nullified (~~(by:~~

~~(a) The collection of rent or donations if all funds collected are used for capital improvements to the exempt property, maintenance and operation of the exempt property, or for exempt purposes.~~

~~(b) Fund raising activities conducted by a nonprofit organization.~~

~~(c) The use of the property for pecuniary gain, for business activities for periods of not more than fifteen days each assessment year so long as all income received from rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or for exempt purposes.~~

~~(d)) as provided by RCW 84.36.805 or by the use of the property, in a county with a population of less than twenty thousand, ((the use of the property)) to promote the following business activities, if the rental income or donations, if any, are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented: Dance lessons, art classes, or music lessons.~~

~~((e) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.))~~

(4) The department of revenue ~~((shall))~~ must narrowly construe this exemption.

**Sec. 9.** RCW 84.36.050 and 2006 c 226 s 2 are each amended to read as follows:

The following property is exempt from taxation:

(1) Property owned or used by or for any nonprofit school or college in this state for educational purposes or cultural or art educational programs as defined in RCW 82.04.4328. Real property so exempt ~~((shall))~~ may not exceed four hundred acres including, but not limited to, buildings and grounds designed for the educational, athletic, or social programs of the institution, the housing of students, religious faculty, and the chief administrator, athletic buildings, and all other school or college facilities, the need for which would be nonexistent but for the presence of the school or college. The property must be principally designed to further the educational, athletic, or social functions of the college or

school. If the property is leased, the benefit of the exemption must inure to such school or college.

(2) Real or personal property owned by a not-for-profit foundation that is established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016. If the property is leased to and used by the institution for college or campus purposes, it must be principally designed to further the educational, athletic, or social functions of the institution. The exemption is only available for property actively utilized by currently enrolled students. The benefit of the exemption must inure to the college.

(3) Subject to ~~((subsection (4) of this section))~~ RCW 84.36.805(2)(a)(i), if the property exempt under subsection (1) or (2) of this section is used by an individual or organization not entitled to a property tax exemption, except as provided in this subsection, the exemption is nullified for the assessment year in which such use occurs. The exemption is not nullified as a result of any of the uses listed in (a) or (b) of this subsection or RCW 84.36.805(8):

(a) The property is used by students, alumni, faculty, staff, or other persons or entities in a manner consistent with the educational, social, or athletic programs, including property used for related administrative and support functions, of the school or college and not for pecuniary gain or to promote business activities. Notwithstanding the foregoing, the school or college may contract with and permit the use of school or college property by persons or entities to provide school or college-related programs or services including, but not limited to, the provision of food services to students, faculty, and staff, the operation of a bookstore on campus, and the provision to the school or college of maintenance, operational, or administrative services without nullifying the exemption; or

(b) The property is used for pecuniary gain or to promote business activities ~~((for not more than seven days in the calendar year))~~ as authorized by RCW 84.36.805, such uses to be measured separately with respect to each specific portion of such property. If exempt property is used as a sports or educational camp or program taught, operated, or conducted by a faculty member who is required or permitted to do so as part of his or her compensation package, the days when the property is so used will not be ~~((included in calculating the seven day limitation of this subsection (3)(b)).~~

~~(4) The amount of rent or donations, if any, received by the college or school for such uses described in subsection (3)(a) or (b) of this section, or by an organization entitled to a property tax exemption, must be reasonable and not exceed maintenance and operation expenses associated with the use by such user.~~

~~(5) The exemption under this section will not be nullified by an inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years))~~ considered to be days when the property is used for nonexempt purposes.

**Sec. 10.** RCW 84.36.060 and 2009 c 58 s 1 are each amended to read as follows:

(1) The following property ~~((shall be))~~ is exempt from taxation:

(a) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections;

(b) All the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance;

(c) All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for meetings of fire companies, as long as the property belongs to any city or town or to a fire company; and

(d) All property owned by humane societies in this state in actual use by the societies.

(2) To receive an exemption under subsection (1)(a) or (b) of this section:

(a) An organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling;

or

(iv) Building permits.

(3) The use of property exempt under subsection (1)(a) or (b) of this section by entities not eligible for a property tax exemption under this chapter, except as provided in ~~((this section))~~ RCW 84.36.805, nullifies the exemption otherwise available for the property for the assessment year. ~~((The exemption is not nullified if:~~

~~(a) The property is used by entities not eligible for a property tax exemption under this chapter for periods of not more than fifty days in the calendar year;~~

~~(b) The property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in the calendar year; and~~

~~(e) The property is used for artistic, scientific, or historic purposes, for the production and performance of musical, dance, artistic, dramatic, or literary works, or for community gatherings or assembly, or meetings.~~

~~(4) The fifty and fifteen-day limitations in subsection (3) of this section do not include days used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as provided in subsection (3) of this section.))~~

**Sec. 11.** RCW 84.36.260 and 2009 c 549 s 1034 are each amended to read as follows:

(1) All real property interests, including fee simple or any lesser interest, development rights, easements, covenants and conservation futures, as that latter term is defined in RCW 84.34.220 as now or hereafter amended, used exclusively for the conservation of ecological systems, natural resources, or open space, including park lands, held by any nonprofit corporation or association the primary purpose of which is the conducting or facilitating of scientific research or the conserving of natural resources or open space for the general public, shall be exempt from ad valorem taxation if either of the following conditions are met:

~~((4))~~ (a) To the extent feasible considering the nature of the property interest involved, such property interests shall be used and effectively dedicated primarily for the purpose of providing scientific research or educational opportunities for the general public or the preservation of native plants or animals, or biotic communities, or works of ancient human beings or geological or geographical formations, of distinct scientific and educational interest, and not for the pecuniary benefit of any person or company, as defined in RCW 82.04.030, and shall be open to the general public for educational and scientific research purposes subject to reasonable restrictions designed for its protection; or

~~((2))~~ (b) Such property interests ~~((shall be))~~ are subject to an option, accepted in writing by the state, a city or a county, or department of the United States government, for the purchase thereof by the state, a city or a county, or the United States, at a price not exceeding the lesser of the following amounts: ~~((a))~~ (i) The sum of the original purchase cost to such nonprofit corporation or association plus interest from the date of acquisition by such corporation or association at the rate of six percent per annum compounded annually to the date of the exercise of the option; or ~~((b))~~ (ii) the appraised value of the property at the time of the granting of the option, as determined by the department of revenue or when the option is held by the United States, or by an appropriate agency thereof.

(2) To be exempt under this section, the property must be used exclusively for the purposes for which exemption is granted, except as provided by RCW 84.36.805.

**Sec. 12.** RCW 84.36.264 and 1994 c 124 s 17 are each amended to read as follows:

Owners of property desiring tax exempt status pursuant to the provisions of RCW 84.36.260 ~~((shall))~~ must make an application for the exemption with the department. If such property qualifies pursuant to RCW 84.36.260~~((2))~~ (1)(b), a copy of the option ~~((shall))~~ must also be submitted to the department. Such

option (~~shall~~) must clearly state the purchase price pursuant to the option or the appraisal value as determined by the department of revenue.

**Sec. 13.** RCW 84.36.805 and 2013 c 212 s 3 are each amended to read as follows:

(1) In order to qualify for an exemption under this chapter, the nonprofit organizations, associations, or corporations must satisfy the conditions in this section.

(2) The property must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose(~~(, except)~~).  
Notwithstanding anything to the contrary in this section:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060(1) (a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising (~~(activities)~~) events does not subject the property to tax if the fund-raising (~~(activities)~~) events are consistent with the purposes for which the exemption is granted or are conducted by a nonprofit organization. If the property is loaned or rented to conduct a fund-raising event, the requirements of (a) of this subsection (2) apply:

(c) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted does not subject the property to tax, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(3) The facilities and services must be available to all regardless of race, color, national origin or ancestry.

(4) The organization, association, or corporation must be duly licensed or certified where such licensing or certification is required by law or regulation.

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller does not qualify for exempt status. This subsection does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under 26 U.S.C. Sec. 501(c) of the federal internal revenue code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition in RCW 35.82.210(2)(a); or

(e) A housing authority established under RCW 35.82.300.

(6) The department must have access to its books in order to determine whether the nonprofit organization, association, or corporation is exempt from taxes under this chapter.

(7) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, (~~(84.36.260)~~) and 84.36.480(2).

(8)(a) The use of property exempt under this chapter, other than as specifically authorized by this chapter, nullifies the exemption otherwise available for the property for the assessment year. However, the exemption is not nullified by the use of the property by any individual, group, or entity, where such use is not otherwise authorized by this chapter, for not more than fifty days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations provided in this subsection (8)(a) do not include days during which setup and takedown activities take place immediately preceding or following a meeting or other event by an individual, group, or entity using the property as provided in this subsection (8)(a).

(b) If uses of the exempt property exceed the fifty and fifteen-day limitations provided in (a) of this subsection (8) during an assessment year, the exemption is removed for the affected portion of the property for that assessment year.

NEW SECTION. Sec. 14. Sections 1701 and 1702, chapter 13, Laws of 2013 2nd sp. sess. do not apply to this act.

NEW SECTION. Sec. 15. Sections 3 and 8 of this act take effect December 31, 2020.

NEW SECTION. Sec. 16. Sections 2 and 7 of this act expire December 31, 2020.

Passed by the Senate February 12, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 100

[Senate Bill 6413]

### CRIMES—DUI—PRIOR OFFENSES

AN ACT Relating to prior offenses for driving under the influence or physical control of a vehicle under the influence; and amending RCW 46.61.5055 AND 10.31.100.

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

**Sec. 1.** RCW 46.61.5055 and 2013 2nd sp.s. c 35 s 13 are each amended to read as follows:

(1) **No prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), 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) **Penalty for alcohol concentration less than 0.15.** 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 three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended 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, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension 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 or other separate alcohol 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 unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** 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 three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended 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, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension 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 or other separate alcohol monitoring device, 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 unless the court finds the offender to be indigent.

(2) **One prior offense in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), 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) **Penalty for alcohol concentration less than 0.15.** 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 three hundred sixty-four days and sixty days of electronic home monitoring. In lieu of the mandatory minimum term of sixty days electronic home monitoring, the court may order at least an additional four days in jail or, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant



to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. 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 or other separate alcohol monitoring device, 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 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, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(i) 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 unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** 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 three hundred sixty-four days and ninety days of electronic home monitoring. In lieu of the mandatory minimum term of ninety days electronic home monitoring, the court may order at least an additional six days in jail or, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. 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 or other separate alcohol monitoring device, 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 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, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension 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 unless the court finds the offender to be indigent.

(3) **Two or three prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** 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 three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred twenty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred twenty days of electronic home monitoring, the court may order at least an additional eight days in jail. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. 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 or other separate alcohol monitoring device, 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 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, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension 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 unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** 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 three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. 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 or other separate alcohol monitoring device, 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 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, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension 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 unless the court finds the offender to be indigent.

(4) **Four or more prior offenses in ten years.** A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

- (a) The person has four or more prior offenses within ten years; or
- (b) The person has ever previously been convicted of:
  - (i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;
  - (ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;
  - (iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or
  - (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5) **Monitoring.**

(a) **Ignition interlock device.** The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) **Monitoring devices.** If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

(c) **Ignition interlock device substituted for 24/7 sobriety program monitoring.** In any county or city where a 24/7 sobriety program is available and verified by the Washington association of sheriffs and police chiefs, the court shall:

- (i) Order the person to install and use a functioning ignition interlock or other device in lieu of such period of 24/7 sobriety program monitoring;
- (ii) Order the person to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section; or
- (iii) Order the person to install and use a functioning ignition interlock or other device in addition to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section.

(6) **Penalty for having a minor passenger in vehicle.** 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) Order the use of an ignition interlock or other device for an additional six months;
- (b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional twenty-four hours of imprisonment and a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars

of the fine may not be suspended unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional five days of imprisonment and a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ten days of imprisonment and a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(7) **Other items courts must consider while setting penalties.** 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;

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers;

(c) Whether the driver was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater; and

(d) Whether a child passenger under the age of sixteen was an occupant in the driver's vehicle.

(8) **Treatment and information school.** An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) **Driver's license privileges of the defendant.** 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) **Penalty for alcohol concentration less than 0.15.** 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) **Penalty for alcohol concentration at least 0.15.** If the person's alcohol concentration was at least 0.15:

(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) **Penalty for refusing to take test.** 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.

Upon its own motion or upon motion by a person, a court may find, on the record, that notice to the department under RCW 46.20.270 has been delayed for three years or more as a result of a clerical or court error. If so, the court may order that the person's license, permit, or nonresident privilege shall not be revoked, suspended, or denied for that offense. The court shall send notice of the finding and order to the department and to the person. Upon receipt of the notice from the court, the department shall not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) **Probation of driving privilege.** 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.

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days 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 liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (ii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug 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 or drug. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock 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), (ii), or (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.

(12) **Waiver of electronic home monitoring.** 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. However, if a court determines that an alcohol monitoring device utilizing wireless reporting technology is reasonably available, the court may require the person to obtain such a device during the period of required electronic home monitoring;

(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, use of an ignition interlock device, the 24/7 sobriety program monitoring, 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-four 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-four days.

(13) **Extraordinary medical placement.** 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(3).

(14) **Definitions.** For purposes of this section and RCW 46.61.502 and 46.61.504:

(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 46.25.110 or an equivalent local ordinance;

(iv) A conviction for a violation of RCW 79A.60.040 or an equivalent local ordinance;

(v) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance;

(vi) A conviction for a violation of RCW 46.09.470(2) or an equivalent local ordinance;

(vii) A conviction for a violation of RCW 46.10.490(2) or an equivalent local ordinance;

(viii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

~~((iv))~~ (ix) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

~~((v))~~ (x) 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))~~ (xi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), ~~((iii))~~ (viii), ~~((iv))~~ (ix), or ~~((v))~~ (x) of this subsection if committed in this state;

~~((vii))~~ (xii) 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;

~~((viii))~~ (xiii) 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;

~~((ix))~~ (xiv) A deferred prosecution granted in another state for a violation of driving or having physical control of a vehicle while under the influence of intoxicating liquor or any drug if the out-of-state deferred prosecution is equivalent to the deferred prosecution under chapter 10.05 RCW, including a requirement that the defendant participate in a chemical dependency treatment program; or

~~((x))~~ (xv) A deferred sentence imposed in a prosecution for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the charge under which the deferred sentence was imposed was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or a violation of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Treatment" means alcohol or drug treatment approved by the department of social and health services;

(c) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(d) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

**Sec. 2.** RCW 10.31.100 and 2013 2nd sp.s. c 35 s 22 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (11) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, 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 or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from 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, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the



officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse(~~(c) or~~

~~(d) The person has violated RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years)).~~

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol or THC in their system;

(f) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(g) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter 79A.60 RCW.

(6) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(7) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an

officer the authority to take appropriate action under the laws of the state of Washington.

(8) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(9) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(10) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(11) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(12) Except as specifically provided in subsections (2), (3), (4), and (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(13) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (9) of this section if the police officer acts in good faith and without malice.

(14) A police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 101

[Senate Bill 6415]

### CRIMES—DUI—CONSECUTIVE SENTENCES

AN ACT Relating to consecutive sentences for driving under the influence or physical control of a vehicle under the influence of intoxicating liquor, marijuana, or any drug; amending RCW 9.94A.589, 46.20.740, and 46.20.750; and creating a new section.

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

**Sec. 1.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to read as follows:

(1)(a) Except as provided in (b) (~~(c)~~) (c), or (d) of this subsection, whenever a person is to be sentenced for two or more current offenses, the

sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under ~~((b)–(f))~~ this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6), or 46.61.5055(4) shall be served consecutively with any sentences imposed under RCW 46.20.740 and 46.20.750.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced

unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

**Sec. 2.** RCW 46.20.740 and 2010 c 269 s 8 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, 46.61.5055, or 10.05.140 stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock 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 gross misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped.

(3) Any sentence imposed for a violation of subsection (2) of this section shall be served consecutively with any sentence imposed under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

**Sec. 3.** RCW 46.20.750 and 2005 c 200 s 2 are each amended to read as follows:

(1) A person who is restricted to the use of a vehicle equipped with an ignition interlock device and who tampers with the device or directs, authorizes, or requests another to tamper with the device, in order to circumvent the device by modifying, detaching, disconnecting, or otherwise disabling it, is guilty of a gross misdemeanor.

(2) A person who knowingly assists another person who is restricted to the use of a vehicle equipped with an ignition interlock device to circumvent the device or to start and operate that vehicle in violation of a court order is guilty of a gross misdemeanor. The provisions of this subsection do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with

an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle.

(3) Any sentence imposed for a violation of subsection (1) of this section shall be served consecutively with any sentence imposed under RCW 46.20.740, 46.61.502, 46.61.504, or 46.61.5055.

**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, 2014, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 102

[Senate Bill 6424]

### HIGH SCHOOL STUDENTS—SEAL OF BILITERACY

AN ACT Relating to establishing a state seal of biliteracy for high school students; amending RCW 28A.230.125; adding a new section to chapter 28A.300 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:

(a) The study of world languages in elementary and secondary schools should be encouraged because it contributes to students' cognitive development and to the national economy and security;

(b) Proficiency in multiple languages enables Washington to participate more effectively in the current global political, social, and economic context;

(c) The benefits to employers of having employees who are fluent in more than one language are clear: Increased access to expanding markets, better service of customers' needs, and expanded trading opportunities with other countries; and

(d) Protecting the state's rich heritage of multiple cultures and languages, as well as building trust and understanding across the multiple cultures and languages of diverse communities, requires multilingual communication skills.

(2) Therefore, the legislature's intent is to promote and recognize linguistic proficiency and cultural literacy in one or more world languages in addition to English through the establishment of a Washington state seal of biliteracy.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The Washington state seal of biliteracy is established to recognize public high school graduates who have attained a high level of proficiency in speaking, reading, and writing in one or more world languages in addition to English. School districts are encouraged to award the seal of biliteracy to graduating high school students who meet the criteria established by the office of the superintendent of public instruction under this section. Participating school districts shall place a notation on a student's high school diploma and high school transcript indicating that the student has earned the seal.

(2) The office of the superintendent of public instruction shall adopt rules establishing criteria for award of the Washington state seal of biliteracy. The criteria must require a student to demonstrate proficiency in English by meeting state high school graduation requirements in English, including through state assessments and credits, and proficiency in one or more world languages other than English. The criteria must permit a student to demonstrate proficiency in another world language through multiple methods including nationally or internationally recognized language proficiency tests and competency-based world language credits awarded under the model policy adopted by the Washington state school directors' association.

(3) For the purposes of this section, a world language other than English must include American sign language and Native American languages.

**Sec. 3.** RCW 28A.230.125 and 2011 1st sp.s. c 11 s 130 are each amended to read as follows:

(1) The superintendent of public instruction, in consultation with the four-year institutions as defined in RCW 28B.76.020, the state board for community and technical colleges, and the workforce training and education coordinating board, shall develop for use by all public school districts a standardized high school transcript. The superintendent 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 a notation of whether the student has earned a certificate of individual achievement or a certificate of academic achievement.

(3) The standardized high school transcript may include a notation of whether the student has earned the Washington state seal of biliteracy established under section 2 of this act.

NEW SECTION. **Sec. 4.** By December 1, 2017, the office of the superintendent of public instruction shall submit a report to the education committees of the legislature that compares the number of students awarded the Washington state seal of biliteracy in the previous two school years and the languages spoken by those students, to the number of students enrolled or previously enrolled in the transitional bilingual instruction program and the languages spoken by those students. The office of the superintendent of public instruction shall also report the methods used by students to demonstrate proficiency for the Washington state seal of biliteracy, and describe how the office of the superintendent of public instruction plans to increase the number of possible methods for students to demonstrate proficiency, particularly in world languages that are not widely spoken.

Passed by the Senate March 10, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 103

[Substitute Senate Bill 6431]

## K-12 SCHOOLS—SUICIDE PREVENTION

AN ACT Relating to assistance for schools in implementing youth suicide prevention activities; amending RCW 28A.300.288; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature finds that according to the department of health, suicide is the second leading cause of death for Washington youth between the ages of ten and twenty-four. Suicide rates among Washington's youth remain higher than the national average. An increasing body of research shows an association between adverse childhood experiences such as trauma, violence, or abuse, and decreased student learning and achievement. Underserved youth populations in Washington who are not receiving access to state services continue to remain at risk for suicide.

**Sec. 2.** RCW 28A.300.288 and 2011 c 185 s 3 are each amended to read as follows:

(1) The office of the superintendent of public instruction shall work with state agency and community partners to ~~((develop pilot projects to))~~ assist schools in implementing youth suicide prevention activities, which may include the following:

(a) Training for school employees, parents, community members, and students in recognizing and responding to the signs of suicide;

(b) Partnering with local coalitions of community members interested in preventing youth suicide; and

(c) Responding to communities determined to be in crisis after a suicide or attempted suicide to prevent further instances of suicide.

(2) The office of the superintendent of public instruction, working with state and community partners, shall prioritize funding appropriated for subsection (1) of this section to communities identified as the highest risk.

**NEW SECTION. Sec. 3.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2014, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 10, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 104

[Engrossed Substitute Senate Bill 6479]

## CHILD WELFARE—CAREGIVER AUTHORITY—PARTICIPATION IN ACTIVITIES

AN ACT Relating to providing caregivers authority to allow children placed in their care to participate in normal childhood activities based on a reasonable and prudent parent standard; reenacting and amending RCW 74.15.030; 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) For the purposes of this section, "caregiver" means a person with whom a child is placed in out-of-home care, or a designated official for a group care facility licensed by the department.

(2) This section applies to all caregivers providing for children in out-of-home care.

(3) Caregivers have the authority to provide or withhold permission without prior approval of the caseworker, department, or court to allow a child in their care to participate in normal childhood activities based on a reasonable and prudent parent standard.

(a) Normal childhood activities include, but are not limited to, extracurricular, enrichment, and social activities, and may include overnight activities outside the direct supervision of the caregiver for periods of over twenty-four hours and up to seventy-two hours.

(b) The reasonable and prudent parent standard means the standard of care used by a caregiver in determining whether to allow a child in his or her care to participate in extracurricular, enrichment, and social activities. This standard is characterized by careful and thoughtful parental decision making that is intended to maintain a child's health, safety, and best interest while encouraging the child's emotional and developmental growth.

(4) Any authorization provided under this section must comply with provisions included in an existing safety plan established by the department or court order.

(5)(a) Caseworkers shall discuss the child's interest in and pursuit of normal childhood activities in their monthly health and safety visits and describe the child's participation in normal childhood activities in the individual service and safety plan.

(b) Caseworkers shall also review a child's interest in and pursuit of normal childhood activities during monthly meetings with parents. Caseworkers shall communicate the opinions of parents regarding their child's participation in normal childhood activities so that the parents' wishes may be appropriately considered.

(6) Neither the caregiver nor the department may be held liable for injuries to the child that occur as a result of authority granted in this section unless the action or inaction of the caregiver or the department resulting in injury constitutes willful or wanton misconduct.

(7) This section does not remove or limit any existing liability protection afforded by law.

**Sec. 2.** RCW 74.15.030 and 2007 c 387 s 5 and 2007 c 17 s 14 are each reenacted and amended to read as follows:

The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies



to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(c) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability; however, a background check is not required if a caregiver approves an activity pursuant to the prudent parent standard contained in section 1 of this act;

(d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed;

(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;

(g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;

(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;

(i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(j) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(k) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(l) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons.

Passed by the Senate March 10, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

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## CHAPTER 105

[Senate Bill 6514]

### BEER AND WINE—SAMPLING—FARMERS MARKETS

AN ACT Relating to modifying the definition of qualifying farmers markets for the purposes of serving and sampling beer and wine; and amending RCW 66.24.170, 66.24.175, and 66.24.244.

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

**Sec. 1.** RCW 66.24.170 and 2013 c 238 s 2 are each amended to read as follows:

(1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year,

one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection include tasting or sampling

privileges subject to the conditions pursuant to RCW 66.24.175. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers. However, if a farmers market does not satisfy this subsection (5)(g)(i)(B), a farmers market is still considered a "qualifying farmers market" if the total combined gross annual sales of farmers and processors at the farmers market is one million dollars or more;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license.

**Sec. 2.** RCW 66.24.175 and 2013 c 238 s 1 are each amended to read as follows:

(1) A qualifying farmers market authorized to allow wineries to sell bottled wine at retail under RCW 66.24.170 or microbreweries to sell bottled beer at retail under RCW 66.24.244, or both, may apply to the liquor control board for an endorsement to allow sampling of wine or beer or both. A winery or microbrewery offering samples under this section must have an endorsement from the board to sell wine or beer, as the case may be, of its own production at a qualifying farmers market under RCW 66.24.170 or 66.24.244, respectively.

(2) Samples may be offered only under the following conditions:

(a) No more than three wineries or microbreweries combined may offer samples at a qualifying farmers market per day.

(b) Samples must be two ounces or less. A winery or microbrewery may provide a maximum of two ounces of wine or beer to a customer per day.

(c) A winery or microbrewery may advertise that it offers samples only at its designated booth, stall, or other designated location at the farmers market.

(d) Customers must remain at the designated booth, stall, or other designated location while sampling beer or wine.

(e) Winery and microbrewery licensees and employees who are involved in sampling activities under this section must hold a class 12 or class 13 alcohol server permit.

(f) A winery or microbrewery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(3) The board may establish additional requirements to ensure that persons under twenty-one years of age and apparently intoxicated persons may not possess or consume alcohol under the authority granted in this section.

(4) The board may prohibit sampling at a farmers market that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the farmers market have an adverse effect on the reduction of chronic public inebriation in the area.

(5) If a winery or microbrewery is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's farmers market endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(6) For the purposes of this section, a "qualifying farmers market" has the same meaning as defined in RCW 66.24.170. ~~((However, if a farmers market does not satisfy RCW 66.24.170(5)(g)(i)(B), which requires that the total combined gross annual sales of vendors who are farmers exceed the total combined gross annual sales of vendors who are processors or resellers, a farmers market is still considered a "qualifying farmers market" if the total~~

~~combined gross annual sales of vendors at the farmers market is one million dollars or more-))~~

**Sec. 3.** RCW 66.24.244 and 2013 c 238 s 3 are each amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any microbrewery licensed under this section may also sell beer produced by another microbrewery or a domestic brewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands.

(4) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(5) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) Any person selling or serving beer must obtain a class 12 or class 13 alcohol server permit.

(d) The beer sold at qualifying farmers markets must be produced in Washington.

(e) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved

locations under an endorsement granted under this subsection (6) include tasting or sampling privileges subject to the conditions pursuant to RCW 66.24.175. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(f) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (6)(f) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(g) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(h) For the purposes of this subsection (6):

~~(i) "Qualifying farmers market" ((means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:~~

~~(A) There are at least five participating vendors who are farmers selling their own agricultural products;~~

~~(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;~~

~~(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;~~

~~(D) The sale of imported items and secondhand items by any vendor is prohibited; and~~

~~(E) No vendor is a franchisee)) has the same meaning as defined in RCW 66.24.170.~~

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(7) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

Passed by the Senate February 17, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 106

[Engrossed Substitute Senate Bill 6517]

### PUBLIC RECORDS—EXEMPTIONS—AGENCY EMPLOYEE DRIVER'S LICENSES AND IDENTICARDS

AN ACT Relating to exempting agency employee driver's license numbers and identicard numbers from public inspection and copying; and reenacting and amending RCW 42.56.250.

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

**Sec. 1.** RCW 42.56.250 and 2010 c 257 s 1 and 2010 c 128 s 9 are each reenacted and amended to read as follows:

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency (~~(that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency)~~). For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter



49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment;

(6) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025;

(7) Except as provided in RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under RCW 47.64.220(1) and described in RCW 47.64.220(2); and

(8) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW 10.97.030.

Passed by the Senate March 10, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 107

[Engrossed Senate Bill 6553]

### REAL PROPERTY—SALE PROCEEDS—DISTRIBUTION

AN ACT Relating to the distribution of real property sale proceeds; and amending RCW 6.21.110, 6.21.24.080, 6.17.140, and 6.17.150.

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

**Sec. 1.** RCW 6.21.110 and 1994 c 185 s 3 are each amended to read as follows:

(1) Upon the return of any sale of real estate, the clerk: (a) Shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation"; (b) shall mail notice of the filing of the return of sale to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them; (c) shall file proof of such mailing in the action; (d) shall apply the proceeds of the sale returned by the sheriff, or so much thereof as may be necessary, to satisfaction of the judgment, including interest as provided in the judgment, and shall pay any excess proceeds as provided in subsection (5) of this section by direction of court order; and (e) upon confirmation of the sale, shall deliver the original certificate of sale to the purchaser.

(2) The judgment creditor or successful purchaser at the sheriff's sale is entitled to an order confirming the sale at any time after twenty days have elapsed from the mailing of the notice of the filing of the sheriff's return, on motion with notice given to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them, unless the judgment debtor, or in case of the judgment debtor's death, the representative, or any nondefaulting party to whom notice was sent shall file objections to confirmation with the clerk within twenty days after the mailing of the notice of the filing of such return.

(3) If objections to confirmation are filed, the court shall nevertheless allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received as of that date.

(4) Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. If on resale the property sells for a greater amount to any person other than the former purchaser, the clerk shall first repay to the former purchaser out of the proceeds of the resale the amount of the former purchaser's bid together with interest as is provided in the judgment.

(5)(a) If, after ~~((the satisfaction))~~ confirmation of the sale and the judgment is satisfied, there ~~((be))~~ are any proceeds of the sale remaining, the clerk shall pay such proceeds, as provided for in (b) of this subsection, to all interests in, or liens against, the property eliminated by sale under this section in the order of priority that the interest, lien, or claim attached to the property, as determined by the court. Any remaining proceeds shall be paid to the judgment debtor, or the judgment debtor's representative, as the case may be, before the order is made upon the motion to confirm the sale only if the party files with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; otherwise, the excess proceeds shall remain in the custody of the clerk until the sale of the property has been disposed of (~~;; but if the sale be confirmed, such excess proceeds shall be paid to the judgment debtor or representative as a matter of course~~)).

(b) Anyone seeking disbursement of surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be served upon or mailed to all persons who had an interest in the property at the time of sale, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion. The clerk shall not disburse such remaining proceeds except upon order of the superior court of such county.

(6) The purchaser shall file the original certificate of sale for record with the recording officer in the county in which the property is located.

**Sec. 2.** RCW 61.24.080 and 1998 c 295 s 10 are each amended to read as follows:

The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his or her attorney: PROVIDED, That the aggregate of the charges by the trustee and his or her attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in that court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the notice of trustee's sale, and an affidavit of mailing as provided in this subsection, with the clerk of the superior court of the county in which the sale took place. The trustee shall

mail copies of the notice of the surplus, the notice of trustee's sale, and the affidavit of mailing to each party to whom the notice of trustee's sale was sent pursuant to RCW 61.24.040(1). The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon compliance with this subsection, the trustee shall be discharged from all further responsibilities for the surplus. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to the surplus in the order of priority that it had attached to the property, as determined by the court. A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be personally served upon, or mailed in the manner specified in RCW 61.24.040(1)(b), to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion. The clerk shall not disburse such surplus except upon order of the superior court of such county.

**Sec. 3.** RCW 6.17.140 and 1988 c 231 s 11 are each amended to read as follows:

The sheriff shall, at a time as near before or after service of the writ on, or mailing of the writ to, the judgment debtor as is possible, execute the writ as follows:

(1) If property has been attached, the sheriff shall indorse on the execution, and pay to the clerk forthwith, if he or she has not already done so, the amount of the proceeds of sales of perishable property or debts due the defendant previously received, sufficient to satisfy the judgment.

(2) If the judgment is not then satisfied, and property has been attached and remains in custody, the sheriff shall sell the same, or sufficient thereof to satisfy the judgment. When property has been attached and it is probable that such property will not be sufficient to satisfy the judgment, the sheriff may, on instructions from the judgment creditor, levy on other property of the judgment debtor without delay.

(3) If then any portion of the judgment remains unsatisfied, or if no property has been attached or the same has been discharged, the sheriff shall levy on the property of the judgment debtor, sufficient to satisfy the judgment, in the manner described in RCW 6.17.160.

(4) If, after the judgment is satisfied, any property remains in custody, the sheriff shall deliver it to the judgment debtor.

(5) Until a levy, personal property shall not be affected by the execution.

(6) When property has been sold or debts received on execution, the sheriff shall pay the proceeds to the clerk who issued the writ, for satisfaction of the judgment as commanded in the writ or for ~~((return))~~ payment of any excess proceeds to all interests in, or liens against, the property eliminated by the sale in the order of priority that the interest, lien, or claim attached to the property, as determined by the court. Any remaining proceeds shall be paid to the judgment debtor. No sheriff or other officer may retain any moneys collected on execution more than twenty days before paying the same to the clerk of the court who issued the writ.

**Sec. 4.** RCW 6.17.150 and 1987 c 442 s 415 are each amended to read as follows:

Upon receipt of proceeds from the sheriff on execution, the clerk shall notify the party to whom the same is payable, and pay over the amount to that party as required by law. If any proceeds remain after satisfaction of the judgment, the clerk shall pay the excess to all interests in, or liens against, the property eliminated by the sale in the order of priority that the interest, lien, or claim attached to the property, as determined by the court. Any remaining proceeds shall be paid to the judgment debtor.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 27, 2014.

Filed in Office of Secretary of State March 27, 2014.

## CHAPTER 108

[Engrossed Second Substitute Senate Bill 6126]

### DEPENDENCY PROCEEDINGS—REPRESENTATION OF CHILDREN

AN ACT Relating to representation of children in dependency matters; amending RCW 13.34.100; adding a new section to chapter 2.53 RCW; creating new sections; and providing an effective date.

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

**NEW SECTION. Sec. 1.** (1) The legislature recognizes that some children may remain in foster care following the termination of the parent and child relationship. These children have legal rights and no longer have a parent to advocate on their behalf, and no other party represents their legal interests. The legislature finds that providing attorneys for children following the termination of the parent and child relationship is fundamental to protecting the child's legal rights and to accelerate permanency.

(2) Although the legislature recognizes that many jurisdictions provide attorneys to children prior to termination of the parent and child relationship, nothing in this act may be construed against the parent's fundamental liberty interest in parenting the child prior to termination of the parent and child relationship as stated in *In re Dependency of K.N.J.*, 171 Wn.2d 568, 574 (2011) and *In re Welfare of Luscier*, 84 Wn.2d 135, 136-37 (1974), unless such a position would jeopardize the child's right to conditions of basic nurture, health, or safety.

**Sec. 2.** RCW 13.34.100 and 2010 c 180 s 2 are each amended to read as follows:

(1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by an independent ((counsel)) attorney in the proceedings. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person

to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) General training related to the guardian ad litem's duties;
- (c) Specific training related to issues potentially faced by children in the dependency system;
- (d) Specific training or education related to child disability or developmental issues;
- (e) Number of years' experience as a guardian ad litem;
- (f) Number of appointments as a guardian ad litem and the county or counties of appointment;
- (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;
- (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;
- (i) The results of an examination of state and national criminal identification data. The examination shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall be done through the Washington state patrol criminal identification section and must include a national check from the federal bureau of investigation based on the submission of fingerprints; and
- (j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program a suitable person appointed by the court to act as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through ~~((counsel))~~ an attorney, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6)(a) The court must appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship pursuant to RCW 13.34.180 and when there is no remaining parent with parental rights.

The court must appoint an attorney for a child when there is no remaining parent with parental rights for six months or longer prior to the effective date of this section if the child is not already represented.

The court may appoint one attorney to a group of siblings, unless there is a conflict of interest, or such representation is otherwise inconsistent with the rules of professional conduct.

(b) Legal services provided by an attorney appointed pursuant to (a) of this subsection do not include representation of the child in any appellate proceedings relative to the termination of the parent and child relationship.

(c)(i) Subject to the availability of amounts appropriated for this specific purpose, the state shall pay the costs of legal services provided by an attorney appointed pursuant to (a) of this subsection, if the legal services are provided in accordance with the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must be calculated pursuant to (c)(ii) of this subsection.

(ii) Counties are encouraged to set caseloads as low as possible and to account for the individual needs of the children in care. Notwithstanding the caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010, when one attorney represents a sibling group, the first child is counted as one case, and each child thereafter is counted as one-half case to determine compliance with the caseload standards pursuant to (c)(i) of this subsection and section 3 of this act.

(iii) The office of civil legal aid is responsible for implementation of (c)(i) and (ii) of this subsection as provided in section 3 of this act.

(7)(a) The court may appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department.

(b)(i) If the court has not already appointed an attorney for a child, or the child is not represented by a privately retained attorney:

(A) The child's caregiver, or any individual, may refer the child to an attorney for the purposes of filing a motion to request appointment of an attorney at public expense; or

(B) The child or any individual may retain an attorney for the child for the purposes of filing a motion to request appointment of an attorney at public expense.

(ii) Nothing in this subsection (7)(b) shall be construed to change or alter the confidentiality provisions of RCW 13.50.100.

(c) Pursuant to this subsection, the department or supervising agency and the child's guardian ad litem shall each notify a child of his or her right to request ~~((counsel))~~ an attorney and shall ask the child whether he or she wishes to have ~~((counsel))~~ an attorney. The department or supervising agency and the child's guardian ad litem shall notify the child and make this inquiry immediately after:

- (i) The date of the child's twelfth birthday;
- (ii) Assignment of a case involving a child age twelve or older; or
- (iii) July 1, 2010, for a child who turned twelve years old before July 1, 2010.

~~((b))~~ (d) The department or supervising agency and the child's guardian ad litem shall repeat the notification and inquiry at least annually and upon the filing of any motion or petition affecting the child's placement, services, or familial relationships.

~~((e))~~ (e) The notification and inquiry is not required if the child has already been appointed ~~((counsel))~~ an attorney.

~~((d))~~ (f) The department or supervising agency shall note in the child's individual service and safety plan, and the guardian ad litem shall note in his or her report to the court, that the child was notified of the right to request ~~((counsel))~~ an attorney and indicate the child's position regarding appointment of ~~((counsel))~~ an attorney.

~~((e))~~ (g) At the first regularly scheduled hearing after:

- (i) The date of the child's twelfth birthday;
- (ii) The date that a dependency petition is filed pursuant to this chapter on a child age twelve or older; or
- (iii) July 1, 2010, for a child who turned twelve years old before July 1, 2010;

the court shall inquire whether the child has received notice of his or her right to request ~~((legal counsel))~~ an attorney from the department or supervising agency and the child's guardian ad litem. The court shall make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday. No inquiry is necessary if the child has already been appointed ~~((counsel))~~ an attorney.

~~((f) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.~~

~~((7))~~ (8) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to this section shall be deemed a guardian ad litem ~~((to represent the best interests of the minor in proceedings before the court)).~~

~~((8))~~ (9) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The program shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The court shall immediately appoint the person recommended by the program.

~~((9))~~ (10) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified.

NEW SECTION. **Sec. 3.** A new section is added to chapter 2.53 RCW to read as follows:

(1) Money appropriated by the legislature for legal services provided by an attorney appointed pursuant to RCW 13.34.100 must be administered by the office of civil legal aid established under RCW 2.53.020.

(2) The office of civil legal aid may enter into contracts with the counties to disburse state funds for an attorney appointed pursuant to RCW 13.34.100. The office of civil legal aid may also require a county to use attorneys under contract with the office for the provision of legal services under RCW 13.34.100 to remain within appropriated amounts.

(3) Prior to distributing state funds under subsection (2) of this section, the office of civil legal aid must verify that attorneys providing legal representation to children under RCW 13.34.100 meet the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010. Caseload limits described in this subsection must be determined as provided in RCW 13.34.100(6)(c)(ii).

NEW SECTION. **Sec. 4.** This act takes effect July 1, 2014.

NEW SECTION. **Sec. 5.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2014, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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## CHAPTER 109

[Substitute House Bill 1292]

### PROSTITUTION CONVICTIONS—VACATION OF RECORD

AN ACT Relating to vacating prostitution convictions; reenacting and amending RCW 9.96.060; and adding a new section to chapter 9.96 RCW.

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

**Sec. 1.** RCW 9.96.060 and 2012 c 183 s 5 and 2012 c 142 s 2 are each reenacted and amended to read as follows:

(1) Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant



meets the tests prescribed in subsection (2) of this section, the court may in its discretion vacate the record of conviction by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) An applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;

(b) The offense was a violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense;

(c) The offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), 9.91.020 (operating a railroad, etc. while intoxicated), or the offense is considered a "prior offense" under RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense;

(d) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses);

(e) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020, or the court determines after a review of the court file that the offense was committed by one family member or household member against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW 10.99.020, or for comparable offenses in another state or in federal court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:

(i) The applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought, or has not provided that notification to the court;

(ii) The applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

(iii) The applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or

(iv) Less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing;

(f) For any offense other than those described in (e) of this subsection, less than three years have passed since the person completed the terms of the sentence, including any financial obligations;

(g) The offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;

(h) The applicant has ever had the record of another conviction vacated; or

(i) The applicant is currently restrained, or has been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

(3) Subject to section 2 of this act, every person convicted of prostitution under RCW 9A.88.030 who committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any crime other than prostitution; or

(b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction(~~(~~or~~~~

~~(c) The applicant has ever had the record of another prostitution conviction vacated).~~

(4) Once the court vacates a record of conviction under subsection (1) of this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under subsection (1) of this section may state that he or she has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(5) All costs incurred by the court and probation services shall be paid by the person making the motion to vacate the record unless a determination is made pursuant to chapter 10.101 RCW that the person making the motion is indigent, at the time the motion is brought.

(6) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

NEW SECTION. Sec. 2. A new section is added to chapter 9.96 RCW to read as follows:

(1) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking, RCW 9A.40.100, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;

(ii) The person who committed any of the acts in (a)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or commercial sex act; and

(iii) The applicant's conviction record for prostitution resulted from such acts; or

(b)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;

(ii) The person who committed any of the acts in (b)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that the applicant had not attained the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and

(iii) The applicant's record of conviction for prostitution resulted from such acts.

(2) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of promoting prostitution in the first degree, RCW 9A.88.070, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant was compelled by threat or force to engage in prostitution;

(ii) The person who compelled the applicant acted knowingly; and

(iii) The applicant's conviction record for prostitution resulted from the compulsion; or

(b)(i) The applicant has a mental incapacity or developmental disability that renders the applicant incapable of consent;

(ii) The applicant was compelled to engage in prostitution;

(iii) The person who compelled the applicant acted knowingly; and

(iv) The applicant's record of conviction for prostitution resulted from the compulsion.

(3) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of promoting commercial sexual abuse of a minor, RCW 9.68A.101, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant had not attained the age of eighteen at the time of the prostitution offense;

(ii) A person advanced commercial sexual abuse or a sexually explicit act of the applicant at the time he or she had not attained the age of eighteen;

(iii) The person committing the acts in (a)(ii) of this subsection acted knowingly; and

(iv) The applicant's record of conviction for prostitution resulted from any of the acts in (a)(ii) of this subsection.

(b) For purposes of this subsection (3), a person:

(i) "Advanced commercial sexual abuse" of the applicant if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor;

(ii) "Advanced a sexually explicit act" of the applicant if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(4) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove each of the following elements by a preponderance of the evidence:

(a) The applicant was induced by force, fraud, or coercion to engage in a commercial sex act and the record of conviction for prostitution resulted from the inducement; or

(b) The applicant was induced to engage in a commercial sex act prior to reaching the age of eighteen and the record of conviction for prostitution resulted from the inducement.

Passed by the House March 10, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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## CHAPTER 110

[House Bill 1724]

### JUVENILES—MENTAL HEALTH OR CHEMICAL DEPENDENCY ASSESSMENTS—STATEMENTS

AN ACT Relating to statements made by juveniles during assessments or screenings for mental health or chemical dependency treatment; and amending RCW 13.40.020 and 13.40.140.

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

**Sec. 1.** RCW 13.40.020 and 2012 c 201 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1) "Assessment" means an individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse, or co-occurring mental health and substance abuse disorders, and recommendations for treatment. "Assessment" includes, but is not limited to, drug and alcohol, psychological and psychiatric

evaluations, records review, clinical interview, and administration of a formal test or instrument;

~~(2)~~ (2) "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))~~ (3) "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))~~ (4) "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))~~ (5) "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))~~ (6) "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))~~ (7) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);

~~((7))~~ (8) "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))~~ (9) "Department" means the department of social and health services;

~~((9))~~ (10) "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))~~ (11) "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))~~ (12) "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))~~ (13) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

~~((13))~~ (14) "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))~~ (15) "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, unless the individual was convicted of a lesser charge or acquitted of the charge for which he or she was previously transferred pursuant to RCW 13.40.110 or who is not otherwise under adult court jurisdiction;

~~((15))~~ (16) "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))~~ (17) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

~~((17))~~ (18) "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;

~~((18))~~ (19) "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;

~~((19))~~ (20) "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;

~~((20))~~ (21) "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;

~~((21))~~ (22) "Physical restraint" means the use of any bodily force or physical intervention to control a juvenile offender or limit a juvenile offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent a juvenile offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive juvenile offender who is unwilling to leave the area voluntarily; or

(c) Guide a juvenile offender from one location to another;

~~((22))~~ (23) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the youth leaves the hospital, birthing center, or clinic;

~~((23))~~ (24) "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;

~~((24))~~ (25) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

~~((25))~~ (26) "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. 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;

~~((26))~~ (27) "Restorative justice" means practices, policies, and programs informed by and sensitive to the needs of crime victims that are designed to encourage offenders to accept responsibility for repairing the harm caused by their offense by providing safe and supportive opportunities for voluntary participation and communication between the victim, the offender, their families, and relevant community members;

~~((27))~~ (28) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons;

~~((28))~~ (29) "Screening" means a process that is designed to identify a child who is at risk of having mental health, substance abuse, or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention, or more comprehensive assessment. A screening may be undertaken with or without the administration of a formal instrument;

(30) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

~~((29))~~ (31) "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;

~~((30))~~ (32) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

~~((31))~~ (33) "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;

~~((32))~~ (34) "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;

~~((33))~~ (35) "Transportation" means the conveying, by any means, of an incarcerated pregnant youth from the institution or detention facility to another location from the moment she leaves the institution or detention facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated youth from the institution or detention facility to a transport vehicle and from the vehicle to the other location;

~~((34))~~ (36) "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;

~~((35))~~ (37) "Violent offense" means a violent offense as defined in RCW 9.94A.030;

~~((36))~~ (38) "Youth court" means a diversion unit under the supervision of the juvenile court.



**Sec. 2.** RCW 13.40.140 and 1981 c 299 s 11 are each amended to read as follows:

(1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefor. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide.

(3) The right to counsel includes the right to the appointment of experts necessary, and the experts shall be required pursuant to the procedures and requirements established by the supreme court.

(4) Upon application of a party, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing, or such subpoenas may be issued by an attorney of record.

(5) All proceedings shall be transcribed verbatim by means which will provide an accurate record.

(6) The general public and press shall be permitted to attend any hearing unless the court, for good cause, orders a particular hearing to be closed. The presumption shall be that all such hearings will be open.

(7) In all adjudicatory proceedings before the court, all parties shall have the right to adequate notice, discovery as provided in criminal cases, opportunity to be heard, confrontation of witnesses except in such cases as this chapter expressly permits the use of hearsay testimony, findings based solely upon the evidence adduced at the hearing, and an unbiased fact finder.

(8) A juvenile shall be accorded the same privilege against self-incrimination as an adult. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence at an adjudicatory hearing over objection. Evidence illegally seized or obtained may not be received in evidence over objection at an adjudicatory hearing to prove the allegations against the juvenile if the evidence would be inadmissible in an adult criminal proceeding. An extrajudicial admission or confession made by the juvenile out of court is insufficient to support a finding that the juvenile committed the acts alleged in the information unless evidence of a corpus delicti is first independently established in the same manner as required in an adult criminal proceeding.

(9) Statements, admissions, or confessions made by a juvenile in the course of a mental health or chemical dependency screening or assessment, whether or not the screening or assessment was ordered by the court, shall not be admissible into evidence against the juvenile on the issue of guilt in any juvenile offense

matter or adult criminal proceeding, unless the juvenile has placed his or her mental health at issue. The statement is admissible for any other purpose or proceeding allowed by law. This prohibition does not apply to statements, admissions, or confessions made to law enforcement, and may not be used to argue for derivative suppression of other evidence lawfully obtained as a result of an otherwise inadmissible statement, admission, or confession.

(10) Waiver of any right which a juvenile has under this chapter must be an express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived.

~~((10))~~ (11) Whenever this chapter refers to waiver or objection by a juvenile, the word juvenile shall be construed to refer to a juvenile who is at least twelve years of age. If a juvenile is under twelve years of age, the juvenile's parent, guardian, or custodian shall give any waiver or offer any objection contemplated by this chapter.

Passed by the House February 3, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 111

[Engrossed Substitute House Bill 1840]

### FIREARM POSSESSION—SURRENDER—PROTECTION, NO-CONTACT, AND RESTRAINING ORDERS

AN ACT Relating to firearms laws concerning persons subject to no-contact orders, protection orders, and restraining orders; amending RCW 9.41.040 and 9.41.800; adding new sections to chapter 9.41 RCW; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 9.41.040 and 2011 c 193 s 1 are each amended to read as follows:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order

restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

(A) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(B) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(I) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(II) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury;

(iii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

((iii)) (iv) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

((iv)) (v) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, 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 or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded

from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

(8) For purposes of this section, "intimate partner" includes: A spouse, a domestic partner, a former spouse, a former domestic partner, a person with whom the restrained person has a child in common, or a person with whom the

restrained person has cohabitated or is cohabitating as part of a dating relationship.

**Sec. 2.** RCW 9.41.800 and 2013 c 84 s 25 are each amended to read as follows:

(1) Any court when entering an order authorized under chapter 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(2) Any court when entering an order authorized under chapter 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a (~~(pistol)~~) firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender a concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

(a) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(b) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c)(i) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(ii) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury, the court shall:

(A) Require the party to surrender any firearm or other dangerous weapon;

(B) Require the party to surrender a concealed pistol license issued under RCW 9.41.070:

(C) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon; and

(D) Prohibit the party from obtaining or possessing a concealed pistol license.

(4) The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

~~((4))~~ (5) In addition to the provisions of subsections (1), (2), and ~~((3))~~ (4) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

~~((5))~~ (6) The requirements of subsections (1), (2), and ~~((4))~~ (5) of this section may be for a period of time less than the duration of the order.

~~((6))~~ (7) The court may require the party to surrender any firearm or other dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding, the chief of police of the municipality having jurisdiction, or to the restrained or enjoined party's counsel or to any person designated by the court.

NEW SECTION. Sec. 3. A new section is added to chapter 9.41 RCW to read as follows:

All law enforcement agencies must develop policies and procedures by January 1, 2015, regarding the acceptance, storage, and return of weapons required to be surrendered under RCW 9.41.800.

NEW SECTION. Sec. 4. A new section is added to chapter 9.41 RCW to read as follows:

By December 1, 2014, the administrative office of the courts shall develop a proof of surrender and receipt pattern form to be used to document that a respondent has complied with a requirement to surrender firearms, dangerous weapons, and his or her concealed pistol license, as ordered by a court under RCW 9.41.800. The administrative office of the courts must also develop a declaration of nonsurrender pattern form to document compliance when the respondent has no firearms, dangerous weapons, or concealed pistol license.

NEW SECTION. Sec. 5. A new section is added to chapter 9.41 RCW to read as follows:

A party ordered to surrender firearms, dangerous weapons, and his or her concealed pistol license under RCW 9.41.800 must file with the clerk of the court a proof of surrender and receipt form or a declaration of nonsurrender form within five judicial days of the entry of the order.

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. Section 5 of this act takes effect December 1, 2014.

Passed by the House February 12, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 112

[Engrossed Second Substitute House Bill 2029]

### ECONOMIC DEVELOPMENT-RELATED ENTITIES—ELIMINATION

AN ACT Relating to eliminating the economic development-related agencies, boards, and commissions; amending RCW 28B.30.530, 28B.155.010, 28C.18.060, 39.102.040, 43.160.060, 43.160.900, 43.330.050, 43.330.080, 43.330.082, 43.330.090, 43.330.250, 43.330.270, 43.330.280, 43.330.375, 50.38.050, 82.14.505, 82.33A.010, 43.131.418, and 43.330.010; reenacting and amending RCW 28C.18.080, 43.84.092, 43.84.092, and 43.330.310; repealing RCW 43.162.005, 43.162.010, 43.162.012, 43.162.015, 43.162.020, 43.162.025, 43.162.030, 43.162.040, 82.33A.020, 43.374.010, 43.336.010, 43.336.020, 43.336.030, 43.336.040, 43.336.050, 43.336.060, 43.336.900, and 43.330.290; providing a contingent effective date; and providing a contingent expiration date.

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

### PART I

### ELIMINATION OF THE WASHINGTON STATE ECONOMIC DEVELOPMENT COMMISSION

**Sec. 101.** RCW 28B.30.530 and 2012 c 229 s 808 are each amended to read as follows:

(1) The board of regents of Washington State University shall establish the Washington State University small business development center.

(2) The center shall provide management and technical assistance including but not limited to training, counseling, and research services to small businesses throughout the state. The center shall work with the department of commerce, the state board for community and technical colleges, the workforce training and education coordinating board, the employment security department, ~~((the Washington state economic development commission,))~~ associate development organizations, and workforce development councils to:

(a) Integrate small business development centers with other state and local economic development and workforce development programs;

(b) Target the centers' services to small businesses;

(c) Tailor outreach and services at each center to the needs and demographics of entrepreneurs and small businesses located within the service area;

(d) Establish and expand small business development center satellite offices when financially feasible; and

(e) Coordinate delivery of services to avoid duplication.

(3) The administrator of the center may contract with other public or private entities for the provision of specialized services.

(4) The small business development center may accept and disburse federal grants or federal matching funds or other funds or donations from any source when made, granted, or donated to carry out the center's purposes. When drawing on funds from the business assistance account created in RCW 28B.30.531, the center must first use the funds to make increased management

and technical assistance available to existing small businesses and start-up businesses at satellite offices. The funds may also be used to develop and expand assistance programs such as small business planning workshops and small business counseling.

(5) By December 1, 2010, the center shall provide a written progress report and a final report to the appropriate committees of the legislature with respect to the requirements in subsection (2) of this section and the amount and use of funding received through the business assistance account. The reports must also include data on the number, location, staffing, and budget levels of satellite offices; affiliations with community colleges, associate development organizations or other local organizations; the number, size, and type of small businesses assisted; and the types of services provided. The reports must also include information on the outcomes achieved, such as jobs created or retained, private capital invested, and return on the investment of state and federal dollars.

(6)(a) Subject to the availability of amounts appropriated for this specific purpose, by December 1, 2010, the center, in conjunction with the department of commerce, must prepare and present to the governor and appropriate legislative committees a specific, actionable plan to increase access to capital and technical assistance to small businesses and entrepreneurs beginning with the 2011-2013 biennium. In developing the plan, the center and the department may consult with the Washington state microenterprise association, and with other government, nonprofit, and private organizations as necessary. The plan must identify:

(i) Existing sources of capital and technical assistance for small businesses and entrepreneurs;

(ii) Critical gaps and barriers to availability of capital and delivery of technical assistance to small businesses and entrepreneurs;

(iii) Workable solutions to filling the gaps and removing barriers identified in (a)(ii) of this subsection; and

(iv) The financial resources and statutory changes necessary to put the plan into effect beginning with the 2011-2013 biennium.

(b) With respect to increasing access to capital, the plan must identify specific, feasible sources of capital and practical mechanisms for expanding access to it.

(c) The center and the department must include, within the analysis and recommendations in (a) of this subsection, any specific gaps, barriers, and solutions related to rural and low-income communities and small manufacturers interested in exporting.

**Sec. 102.** RCW 28B.155.010 and 2012 c 242 s 1 are each amended to read as follows:

(1) The joint center for aerospace technology innovation is created to:

(a) Pursue joint industry-university research in computing, manufacturing efficiency, materials/structures innovation, and other new technologies that can be used in aerospace firms;

(b) Enhance the education of students in the engineering departments of the University of Washington, Washington State University, and other participating institutions through industry-focused research; and



(c) Work directly with existing small, medium-sized, and large aerospace firms and aerospace industry associations to identify research needs and opportunities to transfer off-the-shelf technologies that would benefit such firms.

(2) The center shall be operated and administered as a multi-institutional education and research center, conducting research and development programs in various locations within Washington under the joint authority of the University of Washington and Washington State University. The initial administrative offices of the center shall be west of the crest of the Cascade mountains. In order to meet aerospace industry needs, the facilities and resources of the center must be made available to all four-year institutions of higher education as defined in RCW 28B.10.016. Resources include, but are not limited to, internships, on-the-job training, and research opportunities for undergraduate and graduate students and faculty.

(3) The powers of the center are vested in and shall be exercised by a board of directors. The board shall consist of nine members appointed by the governor. The governor shall appoint a nonvoting chair. Of the eight voting members, one member shall represent small aerospace firms, one member shall represent medium-sized firms, one member shall represent large aerospace firms, one member shall represent labor, two members shall represent aerospace industry associations, and two members shall represent higher education. The terms of the initial members shall be staggered.

(4) The board shall hire an executive director. The executive director shall hire such staff as the board deems necessary to operate the center. Staff support may be provided from among the cooperating institutions through cooperative agreements to the extent funds are available. The executive director may enter into cooperative agreements for programs and research with public and private organizations including state and nonstate agencies consistent with policies of the participating institutions.

(5) The board must:

(a) Work with aerospace industry associations and aerospace firms of all sizes to identify the research areas that will benefit the intermediate and long-term economic vitality of the Washington aerospace industry;

(b) Identify entrepreneurial researchers to join or lead research teams in the research areas specified in (a) of this subsection and the steps the University of Washington and Washington State University will take to recruit such researchers;

(c) Assist firms to integrate existing technologies into their operations and align the activities of the center with those of impact Washington (~~and innovate Washington~~) to enhance services available to aerospace firms;

(d) Develop internships, on-the-job training, research, and other opportunities and ensure that all undergraduate and graduate students enrolled in an aerospace engineering curriculum have direct experience with aerospace firms;

(e) Assist researchers and firms in safeguarding intellectual property while advancing industry innovation;

(f) Develop and strengthen university-industry relationships through promotion of faculty collaboration with industry, and sponsor(~~in collaboration with innovate Washington~~) at least one annual symposium focusing on aerospace research in the state of Washington;

(g) Encourage a full range of projects from small research projects that meet the specific needs of a smaller company to large scale, multipartner projects;

(h) Develop nonstate support of the center's research activities through leveraging dollars from federal and private for-profit and nonprofit sources;

(i) Leverage its financial impact through joint support arrangements on a project-by-project basis as appropriate;

(j) Establish mechanisms for soliciting and evaluating proposals and for making awards and reporting on technological progress, financial leverage, and other measures of impact;

(k) By June 30, 2013, develop an operating plan that includes the specific processes, methods, or mechanisms the center will use to accomplish each of its duties as set out in this subsection; and

(l) Report biennially to the legislature and the governor about the impact of the center's work on the state's economy and the aerospace sector, with projections of future impact, providing indicators of its impact, and outlining ideas for enhancing benefits to the state. The report must be coordinated with the governor's office, ~~((the Washington economic development commission,))~~ and the department of commerce ~~((, and innovate Washington)).~~

**Sec. 103.** RCW 28C.18.060 and 2012 c 229 s 579 are each amended to read as follows:

The board, in cooperation with the operating agencies of the state training system and private career schools and colleges, shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system;

(2) Advocate for the state training system and for meeting the needs of employers and the workforce for workforce education and training;

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs;

(4) Develop and maintain a state comprehensive plan for workforce training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for workforce training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community;

(5) In consultation with the student achievement council, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state

training system for purposes of consistency with the state comprehensive plan for workforce training and education;

(6) Provide for coordination among the different operating agencies and components of the state training system at the state level and at the regional level;

(7) Develop a consistent and reliable database on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state;

(8)(a) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system;

(b) Develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system;

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation;

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system;

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations;

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system;

(13) Provide for effectiveness and efficiency reviews of the state training system;

(14) In cooperation with the student achievement council, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary workforce education and two years of postsecondary workforce education;

(15) In cooperation with the student achievement council, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system;

(16) Develop policy objectives for the workforce investment act, P.L. 105-220, or its successor; develop coordination criteria for activities under the act with related programs and services provided by state and local education and

training agencies; and ensure that entrepreneurial training opportunities are available through programs of each local workforce investment board in the state;

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education;

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants;

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system;

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling;

(21) Facilitate the development of programs for school-to-work transition that combine classroom education and on-the-job training, including entrepreneurial education and training, in industries and occupations without a significant number of apprenticeship programs;

(22) Include in the planning requirements for local workforce investment boards a requirement that the local workforce investment boards specify how entrepreneurial training is to be offered through the one-stop system required under the workforce investment act, P.L. 105-220, or its successor;

(23) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities;

(24) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended;

(25) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence;

(26) Allocate funding from the state job training trust fund;

(27) Work with the director of commerce (~~and the economic development commission~~) to ensure coordination among workforce training priorities (~~(, the long-term economic development strategy of the economic development commission,)~~) and economic development and entrepreneurial development efforts, including but not limited to assistance to industry clusters;

(28) Conduct research into workforce development programs designed to reduce the high unemployment rate among young people between approximately eighteen and twenty-four years of age. In consultation with the operating agencies, the board shall advise the governor and legislature on policies and

programs to alleviate the high unemployment rate among young people. The research shall include disaggregated demographic information and, to the extent possible, income data for adult youth. The research shall also include a comparison of the effectiveness of programs examined as a part of the research conducted in this subsection in relation to the public investment made in these programs in reducing unemployment of young adults. The board shall report to the appropriate committees of the legislature by November 15, 2008, and every two years thereafter. Where possible, the data reported to the legislative committees should be reported in numbers and in percentages;

(29) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section.

**Sec. 104.** RCW 28C.18.080 and 2009 c 421 s 6, 2009 c 151 s 7, and 2009 c 92 s 1 are each reenacted and amended to read as follows:

(1) The board shall develop a state comprehensive plan for workforce training and education for a ten-year time period. The board shall submit the ten-year state comprehensive plan to the governor and the appropriate legislative policy committees. Every four years by December 1st, beginning December 1, 2012, the board shall submit an update of the ten-year state comprehensive plan for workforce training and education to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan and the updates. The plan shall then become the state's workforce training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include workforce training role and mission statements for the workforce development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their workforce development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of workforce training and education programs in the state.

(5) The comprehensive plan shall identify the strategic industry clusters targeted by the workforce development system. In identifying the strategic clusters, the board shall consult with the ~~((economic development commission))~~ department of commerce to identify clusters that meet the criteria identified by the working group convened by the ~~((economic development commission))~~ department of commerce and the workforce training and education coordinating board under RCW 43.330.280.

(6) The board shall report to the appropriate legislative policy committees by December 1st of each year on its progress in implementing the comprehensive plan and on the progress of the operating agencies in meeting their obligations under the plan.

**Sec. 105.** RCW 39.102.040 and 2007 c 229 s 2 are each amended to read as follows:

(1) Prior to applying to the board to use local infrastructure financing, a sponsoring local government shall:

(a) Designate a revenue development area within the limitations in RCW 39.102.060;

(b) Certify that the conditions in RCW 39.102.070 are met;

(c) Complete the process in RCW 39.102.080;

(d) Provide public notice as required in RCW 39.102.100; and

(e) Pass an ordinance adopting the revenue development area as required in RCW 39.102.090.

(2) Any local government that has created an increment area under chapter 39.89 RCW and has not issued bonds to finance any public improvement may apply to the board and have its increment area considered for approval as a revenue development area under this chapter without adopting a new revenue development area under RCW 39.102.090 and 39.102.100 if it amends its ordinance to comply with RCW 39.102.090(1) and otherwise meets the conditions and limitations under this chapter.

(3) As a condition to imposing a sales and use tax under RCW 82.14.475, a sponsoring local government, including any cosponsoring local government seeking authority to impose a sales and use tax under RCW 82.14.475, must apply to the board and be approved for a project award amount. The application shall be in a form and manner prescribed by the board and include but not be limited to information establishing that the applicant is an eligible candidate to impose the local sales and use tax under RCW 82.14.475, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. The board shall make available forms to be used for this purpose. As part of the application, each applicant must provide to the board a copy of the ordinance or ordinances creating the revenue development area as required in RCW 39.102.090. A notice of approval to use local infrastructure financing shall contain a project award that represents the maximum amount of state contribution that the applicant, including any cosponsoring local governments, can earn each year that local infrastructure financing is used. The total of all project awards shall not exceed the annual state contribution limit. The determination of a project award shall be made based on information contained in the application and the remaining amount of annual state contribution limit to be awarded. Determination of a project award by the board is final.

(4)(a) Sponsoring local governments, and any cosponsoring local governments, applying in calendar year 2007 for a competitive project award, must submit completed applications to the board no later than July 1, 2007. By September 15, 2007, in consultation with the department of revenue and the department of ~~((community, trade, and economic development))~~ commerce, the board shall approve competitive project awards from competitive applications submitted by the 2007 deadline. No more than two million five hundred thousand dollars in competitive project awards shall be approved in 2007. For projects not approved by the board in 2007, sponsoring and cosponsoring local governments may apply again to the board in 2008 for approval of a project.

(b) Sponsoring local governments, and any cosponsoring local governments, applying in calendar year 2008 for a competitive project award, must submit completed applications to the board no later than July 1, 2008. By September 18, 2008, in consultation with the department of revenue and the department of ~~((community, trade, and economic development))~~ commerce, the board shall approve competitive project awards from competitive applications submitted by the 2008 deadline.

(c) Except as provided in RCW 39.102.050(2), a total of no more than five million dollars in competitive project awards shall be approved for local infrastructure financing.

(d) The project selection criteria and weighting developed prior to July 22, 2007, for the application evaluation and approval process shall apply to applications received prior to November 1, 2007. In evaluating applications for a competitive project award after November 1, 2007, the board shall ~~((in consultation with the Washington state economic development commission,))~~ develop the relative weight to be assigned to the following criteria:

(i) The project's potential to enhance the sponsoring local government's regional and/or international competitiveness;

(ii) The project's ability to encourage mixed use and transit-oriented development and the redevelopment of a geographic area;

(iii) Achieving an overall distribution of projects statewide that reflect geographic diversity;

(iv) The estimated wages and benefits for the project is greater than the average labor market area;

(v) The estimated state and local net employment change over the life of the project;

(vi) The current economic health and vitality of the proposed revenue development area and the contiguous community and the estimated impact of the proposed project on the proposed revenue development area and contiguous community;

(vii) The estimated state and local net property tax change over the life of the project;

(viii) The estimated state and local sales and use tax increase over the life of the project;

(ix) An analysis that shows that, over the life of the project, neither the local excise tax allocation revenues nor the local property tax allocation revenues will constitute more than eighty percent of the total local funds as described in RCW 39.102.020 ~~((29)(e))~~ (29)(b); and

(x) If a project is located within an urban growth area, evidence that the project utilizes existing urban infrastructure and that the transportation needs of the project will be adequately met through the use of local infrastructure financing or other sources.

(e)(i) Except as provided in this subsection (4)(e), the board may not approve the use of local infrastructure financing within more than one revenue development area per county.

(ii) In a county in which the board has approved the use of local infrastructure financing, the use of such financing in additional revenue development areas may be approved, subject to the following conditions:

(A) The sponsoring local government is located in more than one county; and

(B) The sponsoring local government designates a revenue development area that comprises portions of a county within which the use of local infrastructure financing has not yet been approved.

(iii) In a county where the local infrastructure financing tool is authorized under RCW 39.102.050, the board may approve additional use of the local infrastructure financing tool.

(5) Once the board has approved the sponsoring local government, and any cosponsoring local governments, to use local infrastructure financing, notification must be sent by the board to the sponsoring local government, and any cosponsoring local governments, authorizing the sponsoring local government, and any cosponsoring local governments, to impose the local sales and use tax authorized under RCW 82.14.475, subject to the conditions in RCW 82.14.475.

**Sec. 106.** RCW 43.84.092 and 2013 2nd sp.s. c 23 s 24 and 2013 2nd sp.s. c 11 s 15 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury 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) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar



River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife

account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, ~~((the Washington state economic development commission account,))~~ the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 107.** RCW 43.84.092 and 2013 2nd sp.s. c 23 s 25 and 2013 2nd sp.s. c 11 s 16 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management

improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury 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) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the

judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, ~~((the Washington state economic development commission account,))~~ the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the

agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 108.** RCW 43.160.060 and 2012 c 196 s 10 are each amended to read as follows:

(1) The board is authorized to make direct loans to political subdivisions of the state and to federally recognized Indian tribes for the purposes of assisting the political subdivisions and federally recognized Indian tribes in financing the cost of public facilities, including development of land and improvements for public facilities, project-specific environmental, capital facilities, land use, permitting, feasibility, and marketing studies and plans; project design, site planning, and analysis; project debt and revenue impact analysis; as well as the construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision or the federally recognized Indian tribe and the finding by the board that financial circumstances require grant assistance to enable the project to move forward. However, no more than twenty-five percent of all financial assistance approved by the board in any biennium may consist of grants to political subdivisions and federally recognized Indian tribes.

(2) Application for funds must be made in the form and manner as the board may prescribe. In making grants or loans the board must conform to the following requirements:

(a) The board may not provide financial assistance:

(i) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(ii) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(iii) For a project the primary purpose of which is to facilitate or promote gambling.

(iv) For a project located outside the jurisdiction of the applicant political subdivision or federally recognized Indian tribe.

(b) The board may only provide financial assistance:

(i) For a project demonstrating convincing evidence that a specific private development or expansion is ready to occur and will occur only if the public facility improvement is made that:

(A) Results in the creation of significant private sector jobs or significant private sector capital investment as determined by the board (~~and is consistent with the state comprehensive economic development plan developed by the~~

~~Washington economic development commission pursuant to chapter 43.162 RCW, once the plan is adopted); and~~

(B) Will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities;

(ii) For a project that cannot meet the requirement of (b)(i) of this subsection but is a project that:

(A) Results in the creation of significant private sector jobs or significant private sector capital investment as determined by the board ~~((and is consistent with the state comprehensive economic development plan developed by the Washington economic development commission pursuant to chapter 43.162 RCW, once the plan is adopted));~~

(B) Is part of a local economic development plan consistent with applicable state planning requirements;

(C) Can demonstrate project feasibility using standard economic principles; and

(D) Is located in a rural community as defined by the board, or a rural county;

(iii) For site-specific plans, studies, and analyses that address environmental impacts, capital facilities, land use, permitting, feasibility, marketing, project engineering, design, site planning, and project debt and revenue impacts, as grants not to exceed fifty thousand dollars.

(c) The board must develop guidelines for local participation and allowable match and activities.

(d) An application must demonstrate local match and local participation, in accordance with guidelines developed by the board.

(e) An application must be approved by the political subdivision and supported by the local associate development organization or local workforce development council or approved by the governing body of the federally recognized Indian tribe.

(f) The board may allow de minimis general system improvements to be funded if they are critically linked to the viability of the project.

(g) An application must demonstrate convincing evidence that the median hourly wage of the private sector jobs created after the project is completed will exceed the countywide median hourly wage.

(h) The board must prioritize each proposed project according to:

(i) The relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed, but also giving consideration to the unemployment rate in the area in which the jobs would be located;

(ii) The rate of return of the state's investment, including, but not limited to, the leveraging of private sector investment, anticipated job creation and retention, and expected increases in state and local tax revenues associated with the project;

(iii) Whether the proposed project offers a health insurance plan for employees that includes an option for dependents of employees;

(iv) Whether the public facility investment will increase existing capacity necessary to accommodate projected population and employment growth in a manner that supports infill and redevelopment of existing urban or industrial

areas that are served by adequate public facilities. Projects should maximize the use of existing infrastructure and provide for adequate funding of necessary transportation improvements;

(v) Whether the applicant's permitting process has been certified as streamlined by the office of regulatory assistance; and

(vi) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007.

(i) A responsible official of the political subdivision or the federally recognized Indian tribe must be present during board deliberations and provide information that the board requests.

(3) Before any financial assistance application is approved, the political subdivision or the federally recognized Indian tribe seeking the assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board.

**Sec. 109.** RCW 43.160.900 and 2008 c 327 s 9 are each amended to read as follows:

(1) The community economic revitalization board shall conduct biennial outcome-based evaluations of the financial assistance provided under this chapter. The evaluations shall include information on the number of applications for community economic revitalization board assistance; the number and types of projects approved; the grant or loan amount awarded each project; the projected number of jobs created or retained by each project; the actual number and cost of jobs created or retained by each project; the wages and health benefits associated with the jobs; the amount of state funds and total capital invested in projects; the number and types of businesses assisted by funded projects; the location of funded projects; the transportation infrastructure available for completed projects; the local match and local participation obtained; the number of delinquent loans; and the number of project terminations. The evaluations may also include additional performance measures and recommendations for programmatic changes.

~~(2)((a) By September 1st of each even-numbered year, the board shall forward its draft evaluation to the Washington state economic development commission for review and comment, as required in section 10 of this act. The board shall provide any additional information as may be requested by the commission for the purpose of its review.~~

~~(b) Any written comments or recommendations provided by the commission as a result of its review shall be included in the board's completed evaluation.)~~ The evaluation must be presented to the governor and appropriate committees of the legislature by December 31st of each even-numbered year. The initial evaluation must be submitted by December 31, 2010.

**Sec. 110.** RCW 43.330.050 and 2005 c 136 s 12 are each amended to read as follows:

The department shall be responsible for promoting community and economic development within the state by assisting the state's communities to increase the quality of life of their citizens and their economic vitality, and by assisting the state's businesses to maintain and increase their economic

competitiveness, while maintaining a healthy environment. Community and economic development efforts shall include: Efforts to increase economic opportunity; local planning to manage growth; the promotion and provision of affordable housing and housing-related services; providing public infrastructure; business and trade development; assisting firms and industrial sectors to increase their competitiveness; fostering the development of minority and women-owned businesses; facilitating technology development, transfer, and diffusion; community services and advocacy for low-income persons; and public safety efforts. The department shall have the following general functions and responsibilities:

(1) Provide advisory assistance to the governor, other state agencies, and the legislature on community and economic development matters and issues;

(2) Assist the governor in coordinating the activities of state agencies that have an impact on local government and communities;

(3) Cooperate with ~~((the Washington state economic development commission,))~~ the legislature~~((,))~~ and the governor in the development and implementation of strategic plans for the state's community and economic development efforts;

(4) Solicit private and federal grants for economic and community development programs and administer such programs in conjunction with other programs assigned to the department by the governor or the legislature;

(5) Cooperate with and provide technical and financial assistance to local governments, businesses, and community-based organizations serving the communities of the state for the purpose of aiding and encouraging orderly, productive, and coordinated development of the state, and, unless stipulated otherwise, give additional consideration to local communities and individuals with the greatest relative need and the fewest resources;

(6) Participate with other states or subdivisions thereof in interstate programs and assist cities, counties, municipal corporations, governmental conferences or councils, and regional planning commissions to participate with other states and provinces or their subdivisions;

(7) Hold public hearings and meetings to carry out the purposes of this chapter;

(8) Conduct research and analysis in furtherance of the state's economic and community development efforts including maintenance of current information on market, demographic, and economic trends as they affect different industrial sectors, geographic regions, and communities with special economic and social problems in the state; and

(9) Develop a schedule of fees for services where appropriate.

**Sec. 111.** RCW 43.330.080 and 2012 c 195 s 1 are each amended to read as follows:

(1)(a) The department must contract with county-designated associate development organizations to increase the support for and coordination of community and economic development services in communities or regional areas. The contracting organizations in each community or regional area must:

(i) Be broadly representative of community and economic interests;

(ii) Be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives;



(iii) Work closely with the department to carry out state-identified economic development priorities;

(iv) Work with and include local governments, local chambers of commerce, workforce development councils, port districts, labor groups, institutions of higher education, community action programs, and other appropriate private, public, or nonprofit community and economic development groups; and

(v) Meet and share best practices with other associate development organizations at least two times each year.

(b) The scope of services delivered under the contracts required in (a) of this subsection must include two broad areas of work:

(i) Direct assistance, including business planning, to companies throughout the county who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance must comply with business recruitment and retention protocols established in RCW 43.330.062, and includes:

(A) Working with the appropriate partners throughout the county including, but not limited to, local governments, workforce development councils, port districts, community and technical colleges and higher education institutions, export assistance providers, impact Washington, the Washington state quality award council, small business assistance programs, innovation partnership zones, and other federal, state, and local programs to facilitate the alignment of planning efforts and the seamless delivery of business support services within the entire county;

(B) Providing information on state and local permitting processes, tax issues, export assistance, and other essential information for operating, expanding, or locating a business in Washington;

(C) Marketing Washington and local areas as excellent locations to expand or relocate a business and positioning Washington as a globally competitive place to grow business, which may include developing and executing regional plans to attract companies from out of state;

(D) Working with businesses on site location and selection assistance;

(E) Providing business retention and expansion services throughout the county. Such services must include, but are not limited to, business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses, assistance to trade impacted businesses in applying for grants from the federal trade adjustment assistance for firms program, and the provision of information to businesses on:

(I) Resources available for microenterprise development;

(II) Resources available on the revitalization of commercial districts; and

(III) The opportunity to maintain jobs through shared work programs authorized under chapter 50.60 RCW;

(F) Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington;

(G) Providing or facilitating the provision of export assistance through workshops or one-on-one assistance; and

(H) Using a web-based information system to track data on business recruitment, retention, expansion, and trade; and

(ii) Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies. Research and planning efforts should support increased living standards and increased foreign direct investment, and be aligned with the statewide economic development strategy. Regional associate development organizations retain their independence to address local concerns and goals. Activities include:

(A) Participating in regional planning efforts with workforce development councils involving coordinated strategies around workforce development and economic development policies and programs. Coordinated planning efforts must include, but not be limited to, assistance to industry clusters in the region;

(B) Participating with the state board for community and technical colleges as created in RCW 28B.50.050, and any community and technical colleges in the coordination of the job skills training program and the customized training program within its region;

(C) Collecting and reporting data as specified by the contract with the department for statewide systemic analysis. ~~((The department must consult with the Washington state economic development commission in the establishment of such uniform data as is needed to conduct a statewide systemic analysis of the state's economic development programs and expenditures.))~~ In cooperation with other local, regional, and state planning efforts, contracting organizations may provide insight into the needs of target industry clusters, business expansion plans, early detection of potential relocations or layoffs, training needs, and other appropriate economic information;

(D) In conjunction with other governmental jurisdictions and institutions, ~~((participate [participating]))~~ participating in the development of a countywide economic development plan ~~(, consistent with the state comprehensive plan for economic development developed by the Washington state economic development commission)).~~

(2) The department must provide business services training to the contracting organizations, including but not limited to:

(a) Training in the fundamentals of export assistance and the services available from private and public export assistance providers in the state; and

(b) Training in the provision of business retention and expansion services as required by subsection (1)(b)(i)(E) of this section.

**Sec. 112.** RCW 43.330.082 and 2012 c 195 s 2 are each amended to read as follows:

(1)(a) Contracting associate development organizations must provide the department with measures of their performance and a summary of best practices shared and implemented by the contracting organizations. Annual reports must include the following information to show the contracting organization's impact on employment and overall changes in employment: Current employment and economic information for the community or regional area produced by the employment security department; the net change from the previous year's employment and economic information using data produced by the employment security department; other relevant information on the community or regional area; the amount of funds received by the contracting organization through its contract with the department; the amount of funds received by the contracting organization ~~((s))~~ through all sources; and the contracting organization's impact

on employment through all funding sources. Annual reports may include the impact of the contracting organization on wages, exports, tax revenue, small business creation, foreign direct investment, business relocations, expansions, terminations, and capital investment. Data must be input into a common web-based business information system managed by the department. Specific measures, data standards, and data definitions must be developed in the contracting process between the department (~~(the economic development commission,))~~) and the contracting organization every two years. Except as provided in (b) of this subsection, performance measures should be consistent across regions to allow for statewide evaluation.

(b) In addition to the measures required in (a) of this subsection, contracting associate development organizations in counties with a population greater than one million five hundred thousand persons must include the following measures in reports to the department:

(i) The number of small businesses that received retention and expansion services, and the outcome of those services;

(ii) The number of businesses located outside of the boundaries of the largest city within the contracting associate development organization's region that received recruitment, retention, and expansion services, and the outcome of those services.

(2)(a) The department and contracting associate development organizations must agree upon specific target levels for the performance measures in subsection (1) of this section. Comparison of agreed thresholds and actual performance must occur annually.

(b) Contracting organizations that fail to achieve the agreed performance targets in more than one-half of the agreed measures must develop remediation plans to address performance gaps. The remediation plans must include revised performance thresholds specifically chosen to provide evidence of progress in making the identified service changes.

(c) Contracts and state funding must be terminated for one year for organizations that fail to achieve the agreed upon progress toward improved performance defined under (b) of this subsection. During the year in which termination for nonperformance is in effect, organizations must review alternative delivery strategies to include reorganization of the contracting organization, merging of previous efforts with existing regional partners, and other specific steps toward improved performance. At the end of the period of termination, the department may contract with the associate development organization or its successor as it deems appropriate.

(3) The department must submit (~~(a preliminary report to the Washington economic development commission by September 1st of each even-numbered year, and))~~) a final report to the legislature (~~(and the Washington economic development commission))~~) by December 31st of each even-numbered year on the performance results of the contracts with associate development organizations.

~~((4) Contracting associate development organizations must provide the Washington state economic development commission with information to be used in the comprehensive statewide economic development strategy and progress report due under RCW 43.162.020, by the date determined by the commission.))~~

**Sec. 113.** RCW 43.330.090 and 2012 c 198 s 3 are each amended to read as follows:

(1) The department shall work with private sector organizations, industry and sector associations, federal agencies, state agencies that use a sector-based approach to service delivery, local governments, local associate development organizations, and higher education and training institutions in the development of industry sector-based strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production. The industry sectors targeted by the department may include, but are not limited to, aerospace, agriculture, food processing, forest products, marine services, health and biomedical, software, digital and interactive media, transportation and distribution, and microelectronics. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to an industry sector-based approach to economic development and identifying and assisting additional sectors.

(2) The department's sector-based strategies shall include, but not be limited to, cluster-based strategies that focus on assisting regional industry sectors and related firms and institutions that meet the definition of an industry cluster in this section and based on criteria identified by the working group established in this chapter.

(3)(a) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(b) The department may, in carrying out its efforts to encourage film and video production in the state, solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for the encouragement of film and video production. All revenue received for such purposes shall be deposited into the general fund.

(4) In assisting in the development of regional and statewide industry cluster-based strategies, the department's activities shall include, but are not limited to:

(a) Facilitating regional focus group discussions and conducting studies to identify industry clusters, appraise the current information linkages within a cluster, and identify issues of common concern within a cluster;

(b) Supporting industry and cluster associations, publications of association and cluster directories, and related efforts to create or expand the activities of industry and cluster associations;

(c) Administering a competitive grant program to fund economic development activities designed to further regional cluster growth. In administering the program, the department shall work with ~~((the economic development commission))~~ the workforce training and education coordinating board, the state board for community and technical colleges, the employment security department, business, and labor.

(i) The department shall seek recommendations on criteria for evaluating applications for grant funds and recommend applicants for receipt of grant funds. Criteria shall include not duplicating the purpose or efforts of industry skill panels.

(ii) Applicants must include organizations from at least two counties and participants from the local business community. Eligible organizations include, but are not limited to, local governments, economic development councils, chambers of commerce, federally recognized Indian tribes, workforce development councils, and educational institutions.

(iii) Applications must evidence financial participation of the partner organizations.

(iv) Eligible activities include the formation of cluster economic development partnerships, research and analysis of economic development needs of the cluster, the development of a plan to meet the economic development needs of the cluster, and activities to implement the plan.

(v) Priority shall be given to applicants that complement industry skill panels and will use the grant funds to build linkages and joint projects.

(vi) The maximum amount of a grant is one hundred thousand dollars.

(vii) A maximum of one hundred thousand dollars total can go to King, Pierce, Kitsap, and Snohomish counties combined.

(viii) No more than ten percent of funds received for the grant program may be used by the department for administrative costs.

(5) As used in this chapter, "industry cluster" means a geographic concentration of interconnected companies in a single industry, related businesses in other industries, including suppliers and customers, and associated institutions, including government and education.

**Sec. 114.** RCW 43.330.250 and 2013 2nd sp.s. c 24 s 1 are each amended to read as follows:

(1) The economic development strategic reserve account is created in the state treasury to be used only for the purposes of this section.

(2) Only the governor, with the recommendation of the director of the department of commerce (~~and the economic development commission~~), may authorize expenditures from the account.

~~(3) (Expenditures from the account shall be made in an amount sufficient to fund a minimum of one staff position for the economic development commission and to cover any other operational costs of the commission.~~

~~(4))~~ During the 2009-2011 and 2011-2013 fiscal biennia, moneys in the account may also be transferred into the state general fund.

~~((5))~~ (4) Expenditures from the account may be made to prevent closure of a business or facility, to prevent relocation of a business or facility in the state to a location outside the state, or to recruit a business or facility to the state. Expenditures may be authorized for:

(a) Workforce development;

(b) Public infrastructure needed to support or sustain the operations of the business or facility;

(c) Other lawfully provided assistance, including, but not limited to, technical assistance, environmental analysis, relocation assistance, and planning assistance. Funding may be provided for such assistance only when it is in the public interest and may only be provided under a contractual arrangement ensuring that the state will receive appropriate consideration, such as an assurance of job creation or retention; and

(d) The joint center for aerospace technology innovation.

~~((6))~~ (5) The funds shall not be expended from the account unless:

(a) The circumstances are such that time does not permit the director of the department of commerce or the business or facility to secure funding from other state sources;

(b) The business or facility produces or will produce significant long-term economic benefits to the state, a region of the state, or a particular community in the state;

(c) The business or facility does not require continuing state support;

(d) The expenditure will result in new jobs, job retention, or higher incomes for citizens of the state;

(e) The expenditure will not supplant private investment; and

(f) The expenditure is accompanied by private investment.

~~((7))~~ (6) No more than three million dollars per year may be expended from the account for the purpose of assisting an individual business or facility pursuant to the authority specified in this section.

~~((8))~~ (7) If the account balance in the strategic reserve account exceeds fifteen million dollars at any time, the amount in excess of fifteen million dollars shall be transferred to the education construction account.

**Sec. 115.** RCW 43.330.270 and 2012 c 225 s 1 are each amended to read as follows:

(1) The department must design and implement an innovation partnership zone program through which the state will encourage and support research institutions, workforce training organizations, and globally competitive companies to work cooperatively in close geographic proximity to create commercially viable products and jobs.

(2) The director must designate innovation partnership zones on the basis of the following criteria:

(a) Innovation partnership zones must have three types of institutions operating within their boundaries, or show evidence of planning and local partnerships that will lead to dense concentrations of these institutions:

(i) Research capacity in the form of a university or community college fostering commercially valuable research, nonprofit institutions creating commercially applicable innovations, or a national laboratory;

(ii) An industry cluster as defined in RCW 43.330.090. The cluster must include a dense proximity of globally competitive firms in a research-based industry or industries or individual firms with innovation strategies linked to (a)(i) of this subsection. A globally competitive firm may be signified through international organization for standardization 9000 or 1400 certification, or evidence of sales in international markets; and

(iii) Training capacity either within the zone or readily accessible to the zone. The training capacity requirement may be met by the same institution as the research capacity requirement, to the extent both are associated with an educational institution in the proposed zone.

(b) The support of a local jurisdiction, a research institution, an educational institution, an industry or cluster association, a workforce development council, and an associate development organization, port, or chamber of commerce;

(c) Identifiable boundaries for the zone within which the applicant will concentrate efforts to connect innovative researchers, entrepreneurs, investors, industry associations or clusters, and training providers. The geographic area

defined should lend itself to a distinct identity and have the capacity to accommodate firm growth;

(d) The innovation partnership zone administrator must be an economic development council, port, workforce development council, city, or county.

(3) With respect solely to the research capacity required in subsection (2)(a)(i) of this section, the director may waive the requirement that the research institution be located within the zone. To be considered for such a waiver, an applicant must provide a specific plan that demonstrates the research institution's unique qualifications and suitability for the zone, and the types of jointly executed activities that will be used to ensure ongoing, face-to-face interaction and research collaboration among the zone's partners.

(4) On October 1st of each odd-numbered year, the director must designate innovation partnership zones on the basis of applications that meet the legislative criteria, estimated economic impact of the zone, evidence of forward planning for the zone, and other criteria as developed by the department (~~(in consultation with the Washington state economic development commission)~~). Estimated economic impact must include evidence of anticipated private investment, job creation, innovation, and commercialization. The director must require evidence that zone applicants will promote commercialization, innovation, and collaboration among zone residents.

(5) Innovation partnership zones are eligible for funds and other resources as provided by the legislature or at the discretion of the governor.

(6) If the innovation partnership zone meets the other requirements of the fund sources, then the zone is eligible for the following funds relating to:

- (a) The local infrastructure financing tools program;
- (b) The sales and use tax for public facilities in rural counties;
- (c) Job skills;
- (d) Local improvement districts; and
- (e) Community economic revitalization board projects under chapter 43.160 RCW.

(7) An innovation partnership zone must be designated as a zone for a four-year period. At the end of the four-year period, the zone must reapply for the designation through the department.

(8) If the director finds that an applicant does not meet all of the statutory criteria or additional criteria recommended by the department (~~(in consultation with the Washington state economic development commission)~~) to be designated as an innovation partnership zone, the department must:

- (a) Identify the deficiencies in the proposal and recommended steps for the applicant to take to strengthen the proposal;
- (b) Provide the applicant with the opportunity to appeal the decision to the director; and

(c) Allow the applicant to reapply for innovation partnership designation on October 1st of the following calendar year or during any subsequent application cycle.

(9) If the director finds at any time after the initial year of designation that an innovation partnership zone is failing to meet the performance standards required in its contract with the department, the director may withdraw such designation and cease state funding of the zone.

(10) The department must convene annual information sharing events for innovation partnership zone administrators and other interested parties.

(11) An innovation partnership zone must annually provide performance measures as required by the director, including but not limited to private investment measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation.

(12) The department must compile a biennial report on the innovation partnership zone program by December 1st of every even-numbered year. The report must provide information for each zone on its: Objectives; funding, tax incentives, and other support obtained from public sector sources; major activities; partnerships; performance measures; and outcomes achieved since the inception of the zone or since the previous biennial report. ~~((The Washington state economic development commission must review the department's draft report and make recommendations on ways to increase the effectiveness of individual zones and the program overall.))~~ The department must submit the report ~~((, including the commission's recommendations.))~~ to the governor and legislature beginning December 1, 2010.

**Sec. 116.** RCW 43.330.280 and 2012 c 229 s 708 are each amended to read as follows:

(1) ~~The (Washington state economic development commission) department shall ((, with the advice of an innovation partnership advisory group selected by the commission: (a) Provide information and advice to the department of commerce to assist in the implementation of the innovation partnership zone program, including criteria to be used in the selection of grant applicants for funding;~~

~~(b)) document clusters of companies throughout the state that have comparative competitive advantage or the potential for comparative competitive advantage, using the process and criteria for identifying strategic clusters developed by the working group specified in subsection (2) of this section(;~~

~~(c) Conduct an innovation opportunity analysis to identify (i) the strongest current intellectual assets and research teams in the state focused on emerging technologies and their commercialization, and (ii) faculty and researchers that could increase their focus on commercialization of technology if provided the appropriate technical assistance and resources;~~

~~(d) Based on its findings and analysis, and in conjunction with the research institutions:~~

~~(i) Develop a plan to build on existing, and develop new, intellectual assets and innovation research teams in the state in research areas where there is a high potential to commercialize technologies. The commission shall present the plan to the governor and legislature by December 31, 2009. The publicly funded research institutions in the state shall be responsible for implementing the plan. The plan shall address the following elements and such other elements as the commission deems important:~~

~~(A) Specific mechanisms to support, enhance, or develop innovation research teams and strengthen their research and commercialization capacity in areas identified as useful to strategic clusters and innovative firms in the state;~~

~~(B) Identification of the funding necessary for laboratory infrastructure needed to house innovation research teams;~~



~~(C) Specification of the most promising research areas meriting enhanced resources and recruitment of significant entrepreneurial researchers to join or lead innovation research teams;~~

~~(D) The most productive approaches to take in the recruitment, in the identified promising research areas, of a minimum of ten significant entrepreneurial researchers over the next ten years to join or lead innovation research teams;~~

~~(E) Steps to take in solicitation of private sector support for the recruitment of entrepreneurial researchers and the commercialization activity of innovation research teams; and~~

~~(F) Mechanisms for ensuring the location of innovation research teams in innovation partnership zones;~~

~~(ii) Provide direction for the development of comprehensive entrepreneurial assistance programs at research institutions. The programs may involve multidisciplinary students, faculty, entrepreneurial researchers, entrepreneurs, and investors in building business models and evolving business plans around innovative ideas. The programs may provide technical assistance and the support of an entrepreneur in residence to innovation research teams and offer entrepreneurial training to faculty, researchers, undergraduates, and graduate students. Curriculum leading to a certificate in entrepreneurship may also be offered;~~

~~(e) Develop performance measures to be used in evaluating the performance of innovation research teams, the implementation of the plan and programs under (d)(i) and (ii) of this subsection, and the performance of innovation partnership zone grant recipients, including but not limited to private investment measures, business initiation measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation. The performance measures developed shall be consistent with the economic development commission's comprehensive plan for economic development and its standards and metrics for program evaluation. The commission shall report to the legislature and the governor by June 30, 2009, on the measures developed; and~~

~~(f) Using the performance measures developed, perform a biennial assessment and report, the first of which shall be due December 31, 2012, on:~~

~~(i) Commercialization of technologies developed at state universities, found at other research institutions in the state, and facilitated with public assistance at existing companies;~~

~~(ii) Outcomes of the funding of innovation research teams and recruitment of significant entrepreneurial researchers;~~

~~(iii) Comparison with other states of Washington's outcomes from the innovation research teams and efforts to recruit significant entrepreneurial researchers; and~~

~~(iv) Outcomes of the grants for innovation partnership zones. The report shall include recommendations for modifications of chapter 227, Laws of 2007 and of state commercialization efforts that would enhance the state's economic competitiveness).~~

(2) The ((economic development commission)) department and the workforce training and education coordinating board shall jointly convene a working group to:

(a) Specify the process and criteria for identification of substate geographic concentrations of firms or employment in an industry and the industry's customers, suppliers, supporting businesses, and institutions, which process will include the use of labor market information from the employment security department and local labor markets; and

(b) Establish criteria for identifying strategic clusters which are important to economic prosperity in the state, considering cluster size, growth rate, and wage levels among other factors.

**Sec. 117.** RCW 43.330.310 and 2012 c 229 s 590 and 2012 c 198 s 12 are each reenacted and amended to read as follows:

(1) The legislature establishes a comprehensive green economy jobs growth initiative based on the goal of, by 2020, increasing the number of green economy jobs to twenty-five thousand from the eight thousand four hundred green economy jobs the state had in 2004.

(2) The department, in consultation with the employment security department, the state workforce training and education coordinating board, and the state board for community and technical colleges, shall develop a defined list of terms, consistent with current workforce and economic development terms, associated with green economy industries and jobs.

(3)(a) The employment security department, in consultation with the department, the state workforce training and education coordinating board, the state board for community and technical colleges, Washington State University small business development center, and the Washington State University extension energy program, shall conduct labor market research to analyze the current labor market and projected job growth in the green economy, the current and projected recruitment and skill requirement of green economy industry employers, the wage and benefits ranges of jobs within green economy industries, and the education and training requirements of entry-level and incumbent workers in those industries.

(i) The employment security department shall conduct an analysis of occupations in the forest products industry to: (A) Determine key growth factors and employment projections in the industry; and (B) define the education and skill standards required for current and emerging green occupations in the industry.

(ii) The term "forest products industry" must be given a broad interpretation when implementing (a)(i) of this subsection and includes, but is not limited to, businesses that grow, manage, harvest, transport, and process forest, wood, and paper products.

(b) The University of Washington business and economic development center shall: Analyze the current opportunities for and participation in the green economy by minority and women-owned business enterprises in Washington; identify existing barriers to their successful participation in the green economy; and develop strategies with specific policy recommendations to improve their successful participation in the green economy. The research may be informed by the research of the Puget Sound regional council prosperity partnership, as well as other entities. The University of Washington business and economic development center shall report to the appropriate committees of the house of representatives and the senate on their research, analysis, and recommendations by December 1, 2008.

(4) Based on the findings from subsection (3) of this section, the employment security department, in consultation with the department and taking into account the requirements and goals of chapter 14, Laws of 2008 and other state clean energy and energy efficiency policies, shall propose which industries will be considered high-demand green industries, based on current and projected job creation and their strategic importance to the development of the state's green economy. The employment security department and the department shall take into account which jobs within green economy industries will be considered high-wage occupations and occupations that are part of career pathways to the same, based on family-sustaining wage and benefits ranges. These designations, and the results of the employment security department's broader labor market research, shall inform the planning and strategic direction of the department, the state workforce training and education coordinating board, and the state board for community and technical colleges.

(5) The department shall identify emerging technologies and innovations that are likely to contribute to advancements in the green economy, including the activities in designated innovation partnership zones established in RCW 43.330.270.

(6) The department(~~(, consistent with the priorities established by the state economic development commission,)~~) shall:

(a) Develop targeting criteria for existing investments, and make recommendations for new or expanded financial incentives and comprehensive strategies, to recruit, retain, and expand green economy industries and small businesses; and

(b) Make recommendations for new or expanded financial incentives and comprehensive strategies to stimulate research and development of green technology and innovation, including designating innovation partnership zones linked to the green economy.

(7) For the purposes of this section, "target populations" means (a) entry-level or incumbent workers in high-demand green industries who are in, or are preparing for, high-wage occupations; (b) dislocated workers in declining industries who may be retrained for high-wage occupations in high-demand green industries; (c) dislocated agriculture, timber, or energy sector workers who may be retrained for high-wage occupations in high-demand green industries; (d) eligible veterans or national guard members; (e) disadvantaged populations; or (f) anyone eligible to participate in the state opportunity grant program under RCW 28B.50.271.

(8) The legislature directs the state workforce training and education coordinating board to create and pilot green industry skill panels. These panels shall consist of business representatives from: Green industry sectors, including but not limited to forest product companies, companies engaged in energy efficiency and renewable energy production, companies engaged in pollution prevention, reduction, and mitigation, and companies engaged in green building work and green transportation; labor unions representing workers in those industries or labor affiliates administering state-approved, joint apprenticeship programs or labor-management partnership programs that train workers for these industries; state and local veterans agencies; employer associations; educational institutions; and local workforce development councils within the region that the panels propose to operate; and other key stakeholders as determined by the

applicant. Any of these stakeholder organizations are eligible to receive grants under this section and serve as the intermediary that convenes and leads the panel. Panel applicants must provide labor market and industry analysis that demonstrates high demand, or demand of strategic importance to the development of the state's clean energy economy as identified in this section, for high-wage occupations, or occupations that are part of career pathways to the same, within the relevant industry sector. The panel shall:

(a) Conduct labor market and industry analyses, in consultation with the employment security department, and drawing on the findings of its research when available;

(b) Plan strategies to meet the recruitment and training needs of the industry and small businesses; and

(c) Leverage and align other public and private funding sources.

**Sec. 118.** RCW 43.330.375 and 2012 c 229 s 591 are each amended to read as follows:

(1) The department and the workforce board must:

(a) Coordinate efforts across the state to ensure that federal training and education funds are captured and deployed in a focused and effective manner in order to support green economy projects and accomplish the goals of the evergreen jobs initiative;

(b) Accelerate and coordinate efforts by state and local organizations to identify, apply for, and secure all sources of funds, particularly those created by the 2009 American recovery and reinvestment act, and to ensure that distributions of funding to local organizations are allocated in a manner that is time-efficient and user-friendly for the local organizations. Local organizations eligible to receive support include but are not limited to:

(i) Associate development organizations;

(ii) Workforce development councils;

(iii) Public utility districts; and

(iv) Community action agencies;

(c) Support green economy projects at both the state and local level by developing a process and a framework to provide, at a minimum:

(i) Administrative and technical assistance;

(ii) Assistance with and expediting of permit processes; and

(iii) Priority consideration of opportunities leading to exportable green economy goods and services, including renewable energy technology;

(d) Coordinate local and state implementation of projects using federal funds to ensure implementation is time-efficient and user-friendly for local organizations;

(e) Emphasize through both support and outreach efforts, projects that:

(i) Have a strong and lasting economic or environmental impact;

(ii) Lead to a domestically or internationally exportable good or service, including renewable energy technology;

(iii) Create training programs leading to a credential, certificate, or degree in a green economy field;

(iv) Strengthen the state's competitiveness in a particular sector or cluster of the green economy;

(v) Create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations;

- (vi) Comply with prevailing wage provisions of chapter 39.12 RCW;
- (vii) Ensure at least fifteen percent of labor hours are performed by apprentices;
  - (f) Identify emerging technologies and innovations that are likely to contribute to advancements in the green economy, including the activities in designated innovation partnership zones established in RCW 43.330.270;
  - (g) Identify barriers to the growth of green jobs in traditional industries such as the forest products industry;
  - (h) Identify statewide performance metrics for projects receiving agency assistance. Such metrics may include:
    - (i) The number of new green jobs created each year, their wage levels, and, to the extent determinable, the percentage of new green jobs filled by veterans, members of the national guard, and low-income and disadvantaged populations;
    - (ii) The total amount of new federal funding secured, the respective amounts allocated to the state and local levels, and the timeliness of deployment of new funding by state agencies to the local level;
    - (iii) The timeliness of state deployment of funds and support to local organizations; and
    - (iv) If available, the completion rates, time to completion, and training-related placement rates for green economy postsecondary training programs;
  - (i) Identify strategies to allocate existing and new funding streams for green economy workforce training programs and education to emphasize those leading to a credential, certificate, or degree in a green economy field;
  - (j) Identify and implement strategies to allocate existing and new funding streams for workforce development councils and associate development organizations to increase their effectiveness and efficiency and increase local capacity to respond rapidly and comprehensively to opportunities to attract green jobs to local communities;
  - (k) Develop targeting criteria for existing investments that are consistent with ~~(the economic development commission's economic development strategy and)~~ the goals of this section and RCW 28C.18.170, 28B.50.281, and 49.04.200; and
  - (l) Make and support outreach efforts so that residents of Washington, particularly members of target populations, become aware of educational and employment opportunities identified and funded through the evergreen jobs act.
- (2) The department and the workforce board must provide semiannual performance reports to the governor and appropriate committees of the legislature on:
  - (a) Actual statewide performance based on the performance measures identified in subsection (1)(h) of this section;
  - (b) How the state is emphasizing and supporting projects that lead to a domestically or internationally exportable good or service, including renewable energy technology;
  - (c) A list of projects supported, created, or funded in furtherance of the goals of the evergreen jobs initiative and the actions taken by state and local organizations, including the effectiveness of state agency support provided to local organizations as directed in subsection (1)(b) and (c) of this section;
  - (d) Recommendations for new or expanded financial incentives and comprehensive strategies to:

(i) Recruit, retain, and expand green economy industries and small businesses; and

(ii) Stimulate research and development of green technology and innovation, which may include designating innovation partnership zones linked to the green economy;

(e) Any information that associate development organizations and workforce development councils choose to provide to appropriate legislative committees regarding the effectiveness, timeliness, and coordination of support provided by state agencies under this section and RCW 28C.18.170, 28B.50.281, and 49.04.200; and

(f) Any recommended statutory changes necessary to increase the effectiveness of the evergreen jobs initiative and state responsiveness to local agencies and organizations.

(3) The definitions, designations, and results of the employment security department's broader labor market research under RCW 43.330.010 shall inform the planning and strategic direction of the department, the state workforce training and education coordinating board, the state board for community and technical colleges, and the student achievement council.

**Sec. 119.** RCW 50.38.050 and 2009 c 151 s 2 are each amended to read as follows:

The department shall have the following duties:

(1) Oversight and management of a statewide comprehensive labor market and occupational supply and demand information system, including development of a five-year employment forecast for state and labor market areas;

(2) Produce local labor market information packages for the state's counties, including special studies and job impact analyses in support of state and local employment, training, education, and job creation programs, especially activities that prevent job loss, reduce unemployment, and create jobs;

(3) Coordinate with the office of financial management and the office of the forecast council to improve employment estimates by enhancing data on corporate officers, improving business establishment listings, expanding sample for employment estimates, and developing business entry/exit analysis relevant to the generation of occupational and economic forecasts;

(4) In cooperation with the office of financial management, produce long-term industry and occupational employment forecasts. These forecasts shall be consistent with the official economic and revenue forecast council biennial economic and revenue forecasts; and

(5) Analyze labor market and economic data, including the use of input-output models, for the purpose of identifying industry clusters and strategic industry clusters that meet the criteria identified by the working group convened by the (~~economic development commission~~) department of commerce and the workforce training and education coordinating board under chapter 43.330 RCW.

**Sec. 120.** RCW 82.14.505 and 2010 c 164 s 8 are each amended to read as follows:

(1) Demonstration projects are designated to determine the feasibility of local revitalization financing. For the purpose of this section, "annual state

contribution limit" means four million two hundred thousand dollars statewide per fiscal year.

(a) Notwithstanding RCW 39.104.100, the department must approve each demonstration project for 2009 as follows:

(i) The Whitman county Pullman/Moscow corridor improvement project award may not exceed two hundred thousand dollars;

(ii) The University Place improvement project award may not exceed five hundred thousand dollars;

(iii) The Tacoma international financial services area/Tacoma dome project award may not exceed five hundred thousand dollars;

(iv) The Bremerton downtown improvement project award may not exceed three hundred thirty thousand dollars;

(v) The Auburn downtown redevelopment project award may not exceed two hundred fifty thousand dollars;

(vi) The Vancouver Columbia waterfront/downtown project award may not exceed two hundred twenty thousand dollars; and

(vii) The Spokane University District project award may not exceed two hundred fifty thousand dollars.

(b) Notwithstanding RCW 39.104.100, the department must approve each demonstration project for 2010 meeting the requirements in subsection (2)(c) of this section as follows:

(i) The Richland revitalization area for industry, science and education project award may not exceed three hundred thirty thousand dollars;

(ii) The Lacey gateway town center project award may not exceed five hundred thousand dollars;

(iii) The Mill Creek east gateway planned urban village revitalization area project award may not exceed three hundred thirty thousand dollars;

(iv) The Puyallup river road revitalization area project award may not exceed two hundred fifty thousand dollars;

(v) The Renton south Lake Washington project award may not exceed five hundred thousand dollars; and

(vi) The New Castle downtown project (~~(award)~~) award may not exceed forty thousand dollars.

(2)(a) Local government sponsors of demonstration projects under subsection (1)(a) of this section must submit to the department no later than September 1, 2009, documentation that substantiates that the project has met the conditions, limitations, and requirements provided in chapter 270, Laws of 2009.

(b) Sponsoring local government of demonstration projects under subsection (1)(b) of this section must update and resubmit to the department no later than September 1, 2010, the application already on file with the department to substantiate that the project has met the conditions, limitations, and requirements provided in chapter 270, Laws of 2009 and chapter 164, Laws of 2010 and the project is substantially the same as the project in the original application submitted to the department in 2009.

(c) The department must not approve any resubmitted application unless an economic analysis by a qualified researcher at the department of economics at the University of Washington confirms that there is an eighty-five percent probability that the application's assumptions and estimates of jobs created and increased tax receipts will be achieved by the project and determines that net

state tax revenue will increase as a result of the project by an amount that equals or exceeds the award authorized in subsection (1)(b) of this section. (~~Prior to submitting the economic analysis to the department, the qualified researcher must consult with the economic development commission established in chapter 43.162 RCW regarding his or her preliminary findings. The final economic analysis must include comments and recommendations of the economic development commission.~~)

(3) Within ninety days of such submittal, the economic analysis in subsection (2)(c) of this section must be completed and the department must either approve demonstration projects that have met these conditions, limitations, and requirements or deny resubmitted applications that have not met these conditions, limitations, and requirements.

(4) Local government sponsors of demonstration projects may elect to decline the project awards as designated in this section, and may elect instead to submit applications according to the process described in RCW 39.104.100.

(5) If a demonstration project listed in subsection (1)(b) of this section does not update and resubmit its application to the department by the deadline specified in subsection (2)(b) of this section or if the demonstration project withdraws its application, the associated dollar amounts may not be approved for another project and may not be considered part of the annual state contribution limit under RCW 39.104.020(1).

**Sec. 121.** RCW 82.33A.010 and 2007 c 232 s 8 are each amended to read as follows:

(1) The economic climate council is hereby created.

(2) The council shall (~~in consultation with the Washington economic development commission.~~) select a series of benchmarks that characterize the competitive environment of the state. The benchmarks should be indicators of the cost of doing business; the education and skills of the workforce; a sound infrastructure; and the quality of life. In selecting the appropriate benchmarks, the council shall use the following criteria:

(a) The availability of comparative information for other states and countries;

(b) The timeliness with which benchmark information can be obtained; and

(c) The accuracy and validity of the benchmarks in measuring the economic climate indicators named in this section.

(3) Each year the council shall prepare an official state economic climate report on the present status of benchmarks, changes in the benchmarks since the previous report, and the reasons for the changes. The reports shall include current benchmark comparisons with other states and countries, and an analysis of factors related to the benchmarks that may affect the ability of the state to compete economically at the national and international level.

(4) All agencies of state government shall provide to the council immediate access to all information relating to economic climate reports.

**Sec. 122.** RCW 43.131.418 and 2013 2nd sp.s. c 24 s 3 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2021:



(1) RCW 28B.155.010 and 2014 c ... s 102 (section 102 of this act) & 2012 c 242 s 1; and

(2) RCW 28B.155.020 and 2012 c 242 s 2.

**NEW SECTION. Sec. 123.** The following acts or parts of acts are each repealed:

(1) RCW 43.162.005 (Findings—Intent) and 2011 c 311 s 1, 2007 c 232 s 1, & 2003 c 235 s 1;

(2) RCW 43.162.010 (Washington state economic development commission—Membership—Policies and procedures) and 2011 c 311 s 2, 2007 c 232 s 2, & 2003 c 235 s 2;

(3) RCW 43.162.012 ("Commission" defined) and 2011 c 311 s 3;

(4) RCW 43.162.015 (Executive director) and 2011 c 311 s 4 & 2007 c 232 s 3;

(5) RCW 43.162.020 (Duties—Biennial comprehensive statewide economic development strategy—Report—Biennial budget request—Memorandum of understanding—Performance evaluation—Gifts, grants, donations) and 2012 c 195 s 3, 2011 c 311 s 5, 2009 c 151 s 9, 2007 c 232 s 4, & 2003 c 235 s 3;

(6) RCW 43.162.025 (Additional authority) and 2011 c 311 s 6 & 2007 c 232 s 5;

(7) RCW 43.162.030 (Authority of governor and department of commerce not affected) and 2011 c 311 s 7, 2007 c 232 s 7, & 2003 c 235 s 4;

(8) RCW 43.162.040 (Washington state economic development commission account) and 2011 c 311 s 8; and

(9) RCW 82.33A.020 (Consulting with Washington economic development commission) and 2007 c 232 s 9 & 1996 c 152 s 4.

## **PART II ELIMINATION OF THE WASHINGTON GLOBAL HEALTH TECHNOLOGIES AND PRODUCT DEVELOPMENT COMPETITIVENESS PROGRAM**

**NEW SECTION. Sec. 201.** RCW 43.374.010 (Washington global health technologies and product development competitiveness program) and 2010 1st sp.s. c 13 s 2 are each repealed.

## **PART III ELIMINATION OF THE WASHINGTON TOURISM COMMISSION**

**NEW SECTION. Sec. 301.** The following acts or parts of acts are each repealed:

(1) RCW 43.336.010 (Definitions) and 2009 c 565 s 42 & 2007 c 228 s 101;

(2) RCW 43.336.020 (Commission created—Composition—Terms—Executive director—Rule-making authority) and 2011 1st sp.s. c 50 s 957, 2009 c 549 s 5178, & 2007 c 228 s 102;

(3) RCW 43.336.030 (Tourism industry expansion—Coordinated program—Strategic plan—Tourism marketing plan) and 2007 c 228 s 103;

(4) RCW 43.336.040 (Tourism competitive grant program) and 2007 c 228 s 104;

(5) RCW 43.336.050 (Tourism enterprise account) and 2011 c 5 s 914 & 2007 c 228 s 105;

(6) RCW 43.336.060 (Tourism development program—Report to the legislature) and 2009 c 518 s 13, 2007 c 228 s 107, & 1998 c 299 s 5; and

(7) RCW 43.336.900 (Part headings not law—2007 c 228) and 2007 c 228 s 204.

**PART IV  
ELIMINATION OF THE MICROENTERPRISE  
DEVELOPMENT PROGRAM**

**Sec. 401.** RCW 43.330.010 and 2011 c 286 s 4 are each amended to read as follows:

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

(1) "Associate development organization" means a local economic development nonprofit corporation that is broadly representative of community interests.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce.

(4) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business in this state under state or federal law.

~~(5) ("Microenterprise development organization" means a community development corporation, a nonprofit development organization, a nonprofit social services organization or other locally operated nonprofit entity that provides services to low income entrepreneurs.~~

~~(6))~~ "Small business" has the same meaning as provided in RCW ~~((39.29.006))~~ 39.26.010.

~~((7) "Statewide microenterprise association" means a nonprofit entity with microenterprise development organizations as members that serves as an intermediary between the department of commerce and local microenterprise development organizations.))~~

NEW SECTION. **Sec. 402.** RCW 43.330.290 (Microenterprise development program) and 2009 c 565 s 15 & 2007 c 322 s 3 are each repealed.

**PART V  
MISCELLANEOUS PROVISIONS**

NEW SECTION. **Sec. 501.** Section 106 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. **Sec. 502.** Section 107 of this act takes effect on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

Passed by the House March 13, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

**CHAPTER 113**

[Substitute House Bill 2102]

**PRISONERS—CIVIL SUITS AGAINST VICTIMS**

AN ACT Relating to civil suits by prisoners against victims; and adding a new section to chapter 9.94A RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 9.94A RCW to read as follows:

(1) A person convicted and confined for any of the offenses set forth in subsection (3) of this section must, prior to commencing any civil action in state court against the victim of such offense, or the victim's family, first obtain an order authorizing such action to proceed from the sentencing judge, if available, or the presiding judge in the county of conviction.

(2) This section does not apply to an action brought under Title 26 RCW.

(3) This section applies to persons convicted and confined for any serious violent offense as defined in RCW 9.94A.030.

(4) A court may refuse to authorize an action, or a claim contained therein, to proceed if the court finds that the action, or claim, is frivolous or malicious. In determining whether an action, or a claim asserted therein, is frivolous or malicious, the court may consider, among other things, whether:

(a) The claim's realistic chance of ultimate success is slight;

(b) The claim has no arguable basis in law or in fact;

(c) It is clear that the party cannot prove facts in support of the claim;

(d) The claim has been brought with the intent to harass the opposing party;

or

(e) The claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

(5) For purposes of this section, "victim's family" includes a victim's spouse, domestic partner, children, parents, and siblings.

(6) Failure to obtain the authorization required by this section prior to commencing an action may result in loss of early release time or other privileges, or some combination thereof. The department may exercise discretion to determine whether and how the loss may be applied, and the amount of reduction of early release time, loss of other privileges, or some combination thereof. The department shall adopt rules to implement the provisions of this subsection.

Passed by the House March 10, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

**CHAPTER 114**

[Engrossed Substitute House Bill 2151]

**RECREATIONAL TRAILS**

AN ACT Relating to recreational trails; amending RCW 79.10.120 and 79.10.130; adding new sections to chapter 79.10 RCW; 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 the citizens of the state will benefit from a coordinated effort to plan recreational trails on land managed by the department of natural resources that are accessible by the greatest number of people and are constructed to standards that are consistent statewide. The legislature recognizes that demand for outdoor recreational opportunities continues to expand while the places to enjoy outdoor recreation has diminished due to changes in private landownership and reduced access to federal lands that resulted from a reduction in federal forest road networks. As a result, the public has greater expectations of state-owned land for recreational use. Therefore, greater emphasis on policies that secure recreational access are needed, for public health and safety, as well as for maintaining protections for the state-owned land that are subject to the recreation so that the interests of current and future generations are afforded the same opportunities.

**NEW SECTION. Sec. 2.** A new section is added to chapter 79.10 RCW to read as follows:

(1) The department must develop and implement, through an inclusive stakeholder process managed by the department, an official recreational trail policy that is consistent with this section and the management mandate of the department.

(2)(a) The recreational trail policy developed by the department under this section must provide that recreational trails be developed and managed in a manner that ensures the following principles are satisfied:

(i) Causing the least impact to the land;

(ii) Providing environmental and water quality protection; and

(iii) Maintaining the lowest construction and maintenance costs that are reasonable.

(b) The department should use trail standards developed by the United States forest service as primary guidelines for trail construction and maintenance. However, the department must develop its own construction standards and best management practices when the primary guidelines are deemed insufficient or inapplicable.

(c) Trails developed or maintained consistent with a recreational trail policy developed under this section must comply with Title 79 RCW and all applicable state laws and rules, including those administered by the department of ecology.

(d) After developing the recreational trail policy required in this section, and when developing or assessing recreational trail systems, the department should evaluate existing nondesignated trails for compliance with trail standards and incorporate those trails, when compliant and consistent with the standards, into comprehensive recreational management plans.

(3) When appropriate, the department should incorporate public input on new and existing trail systems, and if deemed appropriate, the department should support formal or informal public forums to allow members of the local community to share concerns and ideas or organize themselves for volunteer trail maintenance.

(4)(a) A recreational trail policy developed by the department under this section must provide for the department to enter into a hold harmless agreement with all volunteers coordinating with the department under the policy or enter into other agreements that limit the department's liability from the actions of volunteers.

(b) Whenever volunteers or volunteer organizations are authorized to perform activities or carry out projects under this subsection, the volunteers or members of the organizations may not be considered employees or agents of the department and the department is not subject to any liability whatsoever arising out of volunteer activities or projects. The liability of the department to volunteers and members of the volunteer organizations is limited in the same manner as provided for in RCW 4.24.210.

**NEW SECTION. Sec. 3.** A new section is added to chapter 79.10 RCW to read as follows:

The department should work with representatives of local governments to find efficiencies in gaining local government permits for the development and maintenance of recreational facilities and trails. If barriers to permitting efficiencies require legislative action to overcome, then the department must provide options for solutions to the appropriate committees of the legislature.

**Sec. 4.** RCW 79.10.120 and 2003 c 182 s 2 are each amended to read as follows:

Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;
- (2) Recreational trails for both vehicular and nonvehicular uses developed or maintained consistent with section 2 of this act;
- (3) Special educational or scientific studies;
- (4) Experimental programs by the various public agencies;
- (5) Special events;
- (6) Hunting and fishing and other sports activities;
- (7) Nonconsumptive wildlife activities as defined by the board of natural resources;
- (8) Maintenance of scenic areas;
- (9) Maintenance of historical sites;
- (10) Municipal or other public watershed protection;
- (11) Greenbelt areas;
- (12) Public rights-of-way;
- (13) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations.

**Sec. 5.** RCW 79.10.130 and 2013 c 15 s 1 are each amended to read as follows:

(1) The department is hereby authorized to carry out all activities necessary to achieve the purposes of this section and RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, (~~79.10.130,~~) 79.10.200 through 79.10.330, 79.44.003, and 79.105.050 including, but not limited to:

(a) Planning, construction, and operation of conservation, recreational sites, areas, roads, and trails developed or maintained consistent with section 2 of this act, by itself or in conjunction with any public agency, nonprofit organization, volunteer, or volunteer organization, including entering cooperative agreements for these purposes;

(b) Planning, construction, and operation of special facilities for educational, scientific, conservation, or experimental purposes by itself or in conjunction with any other public or private agency, including entering cooperative agreements for these purposes;

(c) Improvement of any lands to achieve the purposes of this section and RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, ~~((79.10.130,))~~ 79.10.200 through 79.10.330, 79.44.003, and 79.105.050, including entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations for these purposes;

(d) Entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations regarding the use of lands managed by the department for the purpose of providing a benefit to lands managed by the department, including but not limited to the following benefits: The utilization of such lands for watershed purposes; carrying out restoration and enhancement projects on such lands, such as improving, restoring, or enhancing habitat that provides for plant or animal species protection; improving, restoring, or enhancing watershed conditions; removing nonnative vegetation and providing vegetation management to restore, enhance, or maintain properly functioning conditions of the local ecosystem; and other similar projects on these lands that provide long-term environmental and other land management benefits, provided that the cooperative agreements are consistent with land management obligations;

(e) Authorizing individual volunteers and volunteer organizations to conduct restoration and enhancement projects on lands managed by the department through cooperative agreements authorized in this section or other arrangements that are consistent with land management obligations and that do not require the volunteers to pay a fee for the cooperative agreement purpose;

(f) Authorizing the receipt of gifts of personal property, services, and other items of value for the purposes of this section, as well as the exchange of consideration in cooperative agreements authorized under this section;

(g) The authority to make such leases, contracts, agreements, or other arrangements as are necessary to accomplish the purposes of this section and RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, ~~((79.10.130,))~~ 79.10.200 through 79.10.330, 79.44.003, and 79.105.050. However, nothing in this section shall affect any existing requirements for public bidding or auction with private agencies or parties, except that agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, nonprofit organizations, volunteers, and volunteer organizations. In addition, nothing in this section is intended to conflict with the department's trust obligations.

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

(a) "Nonprofit organization" means: (i) Any organization described in section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and exempt from tax under section 501(a) of the internal revenue code; or (ii) any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(b) "Volunteer" or "volunteer organization" means an individual or entity performing services for a nonprofit organization or a governmental entity who does not receive compensation, other than reasonable reimbursement or allowances for expenses actually incurred, or any other thing of value, in excess of five hundred dollars per year. "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

**NEW SECTION, Sec. 6.** (1) The initial recreational trail policies required under section 2 of this act must be reviewed by the department of ecology and a representative panel of stakeholders and be adopted by October 31, 2015.

(2) This section expires June 30, 2016.

Passed by the House February 12, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 115

[Substitute House Bill 2153]

### EOSINOPHILIC GASTROINTESTINAL ASSOCIATED DISORDERS

AN ACT Relating to the treatment of eosinophilic gastrointestinal associated disorders; adding a new section to chapter 41.05 RCW; and adding a new section to chapter 48.43 RCW.

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

**NEW SECTION, Sec. 1.** A new section is added to chapter 41.05 RCW to read as follows:

(1) Each health benefit plan offered to public employees and their covered dependents under this chapter that is not subject to chapter 48.43 RCW and that is issued or renewed after December 31, 2015, must offer benefits or coverage for medically necessary elemental formula, regardless of delivery method, when a licensed physician or other health care provider with prescriptive authority:

(a) Diagnoses a patient with an eosinophilic gastrointestinal associated disorder; and

(b) Orders and supervises the use of the elemental formula.

(2) Nothing in this section prohibits a health benefit plan from requiring prior authorization or imposing other appropriate utilization controls in approving coverage for medically necessary elemental formula.

**NEW SECTION, Sec. 2.** A new section is added to chapter 48.43 RCW to read as follows:

(1) Each health benefit plan issued or renewed after December 31, 2015, must offer benefits or coverage for medically necessary elemental formula, regardless of delivery method, when a licensed physician or other health care provider with prescriptive authority:

(a) Diagnoses a patient with an eosinophilic gastrointestinal associated disorder; and

(b) Orders and supervises the use of the elemental formula.

(2) Nothing in this section prohibits a health benefit plan from requiring prior authorization or imposing other appropriate utilization controls in approving coverage for medically necessary elemental formula.

Passed by the House February 14, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 116

[Engrossed Substitute House Bill 2160]

### PHYSICAL THERAPISTS—SPINAL MANIPULATION

AN ACT Relating to allowing physical therapists to perform spinal manipulation; amending RCW 18.74.—, 18.74.010, 18.74.035, and 18.74.085; adding a new section to chapter 18.74 RCW; and providing effective dates.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 18.74 RCW to read as follows:

(1) Subject to the limitations of this section, a physical therapist may perform spinal manipulation only after being issued a spinal manipulation endorsement by the secretary. The secretary, upon approval by the board, shall issue an endorsement to a physical therapist who has at least one year of full-time, orthopedic, postgraduate practice experience that consists of direct patient care and averages at least thirty-six hours a week and who provides evidence in a manner acceptable to the board of all of the following additional requirements:

(a) Training in differential diagnosis of no less than one hundred hours outlined within a course curriculum;

(b) Didactic and practical training related to the delivery of spinal manipulative procedures of no less than two hundred fifty hours clearly delineated and outlined in a course curriculum;

(c) Specific training in spinal diagnostic imaging of no less than one hundred fifty hours outlined in a course curriculum; and

(d) At least three hundred hours of supervised clinical practical experience in spinal manipulative procedures. The supervised clinical practical experience must:

(i) Be supervised by a clinical supervisor who:

(A) Holds a spinal manipulation endorsement under this section;

(B) Is a licensed chiropractor or osteopathic physician and surgeon; or

(C) Holds an endorsement or advanced certification the training requirements for which are commensurate with the training requirements in this section;

(ii) Be under the close supervision of the clinical supervisor for a minimum of the first one hundred fifty hours of the supervised clinical practical experience, after which the supervised clinical practical experience must be under the direct supervision of the clinical supervisor;

(iii) Be completed within eighteen months of completing the educational requirements in (a) through (c) of this subsection, unless the physical therapist has completed the educational requirements in (a) through (c) of this subsection prior to the effective date of this section, in which case the supervised clinical practical experience must be completed by January 1, 2017.

(2) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section shall consult with a health care practitioner, other



than a physical therapist, authorized to perform spinal manipulation if spinal manipulative procedures are required beyond six treatments.

(3) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section may not:

(a) Have a practice in which spinal manipulation constitutes the majority of the services provided;

(b) Practice or utilize chiropractic manipulative therapy in any form;

(c) Delegate spinal manipulation; or

(d) Bill a health carrier for spinal manipulation separately from, or in addition to, other physical therapy procedures.

(4) A physical therapist holding a spinal manipulation endorsement under this section shall complete at least ten hours of continuing education per continuing competency reporting period directly related to spinal manipulation. At least five hours of the training required under this subsection must be related to procedural technique and application of spinal manipulation.

(5) If a physical therapist is intending to perform spinal manipulation on a patient who the physical therapist knows is being treated by a chiropractor for the same diagnosis, the physical therapist shall make reasonable efforts to coordinate patient care with the chiropractor to prevent conflict or duplication of services.

(6) By November 15, 2019, the board shall report to the legislature any disciplinary actions taken against physical therapists whose performance of spinal manipulation and manipulative mobilization of the spine and its immediate articulations resulted in physical harm to a patient. Prior to finalizing the report required under this subsection, the board shall consult with the chiropractic quality assurance commission.

**Sec. 2.** RCW 18.74.— and 2014 c ... s 1 (section 1 of this act) are each amended to read as follows:

(1) Subject to the limitations of this section, a physical therapist may perform spinal manipulation only after being issued a spinal manipulation endorsement by the secretary. The secretary, upon approval by the board, shall issue an endorsement to a physical therapist who has at least one year of full-time, orthopedic, postgraduate practice experience that consists of direct patient care and averages at least thirty-six hours a week and who provides evidence in a manner acceptable to the board of all of the following additional requirements:

(a) Training in differential diagnosis of no less than one hundred hours outlined within a course curriculum;

(b) Didactic and practical training related to the delivery of spinal manipulative procedures of no less than two hundred fifty hours clearly delineated and outlined in a course curriculum;

(c) Specific training in spinal diagnostic imaging of no less than one hundred fifty hours outlined in a course curriculum; and

(d) At least three hundred hours of supervised clinical practical experience in spinal manipulative procedures. The supervised clinical practical experience must:

(i) Be supervised by a clinical supervisor who:

(A) Holds a spinal manipulation endorsement under this section; or

(B) Is a licensed chiropractor or osteopathic physician and surgeon(~~or~~)

~~(C) Holds an endorsement or advanced certification the training requirements for which are commensurate with the training requirements in this section));~~

(ii) Be under the close supervision of the clinical supervisor for a minimum of the first one hundred fifty hours of the supervised clinical practical experience, after which the supervised clinical practical experience must be under the direct supervision of the clinical supervisor;

(iii) Be completed within eighteen months of completing the educational requirements in (a) through (c) of this subsection, unless the physical therapist has completed the educational requirements in (a) through (c) of this subsection prior to the effective date of this section, in which case the supervised clinical practical experience must be completed by January 1, 2017.

(2) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section shall consult with a health care practitioner, other than a physical therapist, authorized to perform spinal manipulation if spinal manipulative procedures are required beyond six treatments.

(3) A physical therapist holding a spinal manipulation endorsement under subsection (1) of this section may not:

(a) Have a practice in which spinal manipulation constitutes the majority of the services provided;

(b) Practice or utilize chiropractic manipulative therapy in any form;

(c) Delegate spinal manipulation; or

(d) Bill a health carrier for spinal manipulation separately from, or in addition to, other physical therapy procedures.

(4) A physical therapist holding a spinal manipulation endorsement under this section shall complete at least ten hours of continuing education per continuing competency reporting period directly related to spinal manipulation. At least five hours of the training required under this subsection must be related to procedural technique and application of spinal manipulation.

(5) If a physical therapist is intending to perform spinal manipulation on a patient who the physical therapist knows is being treated by a chiropractor for the same diagnosis, the physical therapist shall make reasonable efforts to coordinate patient care with the chiropractor to prevent conflict or duplication of services.

(6) By November 15, 2019, the board shall report to the legislature any disciplinary actions taken against physical therapists whose performance of spinal manipulation and manipulative mobilization of the spine and its immediate articulations resulted in physical harm to a patient. Prior to finalizing the report required under this subsection, the board shall consult with the chiropractic quality assurance commission.

**Sec. 3.** RCW 18.74.010 and 2007 c 98 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) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of health.

(3) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed by the state. Except as

provided in section 1 of this act, the use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation, or manipulative mobilization of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

(4) "Physical therapist" means a person who meets all the requirements of this chapter and is licensed in this state to practice physical therapy.

(5) "Secretary" means the secretary of health.

(6) Words importing the masculine gender may be applied to females.

(7) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, podiatric physicians and surgeons, dentists, and advanced registered nurse practitioners: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws.

(8) "Practice of physical therapy" is based on movement science and means:

(a) Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement, and disability or other health and movement-related conditions in order to determine a diagnosis, prognosis, plan of therapeutic intervention, and to assess and document the ongoing effects of intervention;

(b) Alleviating impairments and functional limitations in movement by designing, implementing, and modifying therapeutic interventions that include therapeutic exercise; functional training related to balance, posture, and movement to facilitate self-care and reintegration into home, community, or work; manual therapy including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive, adaptive, protective, and devices related to postural control and mobility except as restricted by (c) of this subsection; airway clearance techniques; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction;

(c) Training for, and the evaluation of, the function of a patient wearing an orthosis or prosthesis as defined in RCW 18.200.010. Physical therapists may provide those direct-formed and prefabricated upper limb, knee, and ankle-foot orthoses, but not fracture orthoses except those for hand, wrist, ankle, and foot fractures, and assistive technology devices specified in RCW 18.200.010 as exemptions from the defined scope of licensed orthotic and prosthetic services. It is the intent of the legislature that the unregulated devices specified in RCW 18.200.010 are in the public domain to the extent that they may be provided in common with individuals or other health providers, whether unregulated or regulated under Title 18 RCW, without regard to any scope of practice;

(d) Performing wound care services that are limited to sharp debridement, debridement with other agents, dry dressings, wet dressings, topical agents including enzymes, hydrotherapy, electrical stimulation, ultrasound, and other similar treatments. Physical therapists may not delegate sharp debridement. A physical therapist may perform wound care services only by referral from or after consultation with an authorized health care practitioner;

(e) Reducing the risk of injury, impairment, functional limitation, and disability related to movement, including the promotion and maintenance of fitness, health, and quality of life in all age populations; and

(f) Engaging in administration, consultation, education, and research.

(9)(a) "Physical therapist assistant" means a person who meets all the requirements of this chapter and is licensed as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist. However, a physical therapist may not delegate sharp debridement to a physical therapist assistant.

(b) "Physical therapy aide" means a person who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on-the-job training.

(c) "Other assistive personnel" means other trained or educated health care personnel, not defined in (a) or (b) of this subsection, who perform specific designated tasks related to physical therapy under the supervision of a physical therapist, including but not limited to licensed massage practitioners, athletic trainers, and exercise physiologists. At the direction of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their training or education.

(10) "Direct supervision" means the ~~((supervising physical therapist))~~ supervisor must (a) be continuously on-site and present in the department or facility where ~~((assistive personnel or holders of interim permits are))~~ the person being supervised is performing services; (b) be immediately available to assist the person being supervised in the services being performed; and (c) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel or is required to be directly supervised under section 1 of this act.

(11) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as acceptable health care practice requires and consistent with the particular delegated health care task.

(12) "Sharp debridement" means the removal of devitalized tissue from a wound with scissors, scalpel, and tweezers without anesthesia. "Sharp debridement" does not mean surgical debridement. A physical therapist may perform sharp debridement, to include the use of a scalpel, only upon showing evidence of adequate education and training as established by rule. Until the rules are established, but no later than July 1, 2006, physical therapists licensed under this chapter who perform sharp debridement as of July 24, 2005, shall submit to the secretary an affidavit that includes evidence of adequate education and training in sharp debridement, including the use of a scalpel.

(13) "Spinal manipulation" includes spinal manipulation, spinal manipulative therapy, high velocity thrust maneuvers, and grade five mobilization of the spine and its immediate articulations.

(14) "Close supervision" means that the supervisor has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervisor is continuously on-site and physically present in the operatory while the procedures are performed and capable of responding immediately in the event of an emergency.

**Sec. 4.** RCW 18.74.035 and 2007 c 98 s 4 are each amended to read as follows:

(1) All qualified applicants for a license as a physical therapist shall be examined by the board at such time and place as the board may determine. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, as defined in this chapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this chapter; and such other subjects as the board may deem useful to test the applicant's fitness to practice physical therapy(~~(, but not including the adjustment or manipulation of the spine or use of a thrusting force as mobilization)~~). Examinations shall be held within the state at least once a year, at such time and place as the board shall determine. An applicant who fails an examination may apply for reexamination upon payment of a reexamination fee determined by the secretary.

(2) All qualified applicants for a license as a physical therapist assistant must be examined by the board at such a time and place as the board may determine. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

**Sec. 5.** RCW 18.74.085 and 1988 c 185 s 4 are each amended to read as follows:

(1) Physical therapists shall not advertise that they perform spinal manipulation ((~~or~~)), manipulative mobilization of the spine, chiropractic adjustment, spinal adjustment, maintenance or wellness manipulation, or chiropractic care of any kind.

(2) A violation of this section is unprofessional conduct under this chapter and chapter 18.130 RCW.

NEW SECTION. **Sec. 6.** Except for section 2 of this act, this act takes effect July 1, 2015.

NEW SECTION. **Sec. 7.** Section 2 of this act takes effect July 1, 2020.

Passed by the House February 13, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 117

[Engrossed Substitute House Bill 2164]

### JUVENILES—FIREARM OFFENDERS—INTERVENTIONS

AN ACT Relating to evidence-based and research-based interventions for juvenile firearm offenders; amending RCW 13.40.193, 13.40.127, 13.40.210, and 13.50.010; and adding a new section to chapter 13.40 RCW.

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

**Sec. 1.** RCW 13.40.193 and 2003 c 53 s 100 are each amended to read as follows:

(1) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040(2)(a)(iii), the court shall impose a minimum disposition of ten days of confinement. If the offender's standard range of disposition for the offense as indicated in RCW 13.40.0357 is more than thirty days of confinement, the court shall commit the offender to the department for the standard range disposition. The offender shall not be released until the offender has served a minimum of ten days in confinement.

(2)(a) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040, the disposition must include a requirement that the respondent participate in a qualifying program as described in (b) of this subsection, when available, unless the court makes a written finding based on the outcome of the juvenile court risk assessment that participation in a qualifying program would not be appropriate.

(b) For purposes of this section, "qualifying program" means an aggression replacement training program, a functional family therapy program, or another program applicable to the juvenile firearm offender population that has been identified as evidence-based or research-based and cost-beneficial in the current list prepared at the direction of the legislature by the Washington state institute for public policy.

(3) If the court finds that the respondent or an accomplice was armed with a firearm, the court shall determine the standard range disposition for the offense pursuant to RCW 13.40.160. If the offender or an accomplice was armed with a firearm when the offender committed any felony other than possession of a machine gun, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, or use of a machine gun in a felony, the following periods of total confinement must be added to the sentence: For a class A felony, six months; for a class B felony, four months; and for a class C felony, two months. The additional time shall be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357.

~~((3))~~ (4) When a disposition under this section would effectuate a manifest injustice, the court may impose another disposition. When a judge finds a manifest injustice and imposes a disposition of confinement exceeding thirty days, the court shall commit the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. When a judge finds a manifest injustice and imposes a disposition of confinement less than thirty days, the disposition shall be comprised of confinement or community supervision or both.

~~((4))~~ (5) Any term of confinement ordered pursuant to this section shall run consecutively to any term of confinement imposed in the same disposition for other offenses.

**Sec. 2.** RCW 13.40.127 and 2013 c 179 s 5 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. The court may waive the fourteen-day period anytime before the commencement of trial for good cause.

(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;

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses; and

(d) Acknowledge the direct consequences of being found guilty and the direct consequences that will happen if an order of disposition is entered.

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.

The court may require the juvenile to undergo a mental health or substance abuse assessment, or both. If the assessment identifies a need for treatment, conditions of supervision may include treatment for the assessed need that has been demonstrated to improve behavioral health and reduce recidivism.

The court shall require a juvenile granted a deferral of disposition for unlawful possession of a firearm in violation of RCW 9.41.040 to participate in a qualifying program as described in RCW 13.40.193(2)(b), when available, unless the court makes a written finding based on the outcome of the juvenile court risk assessment that participation in a qualifying program would not be appropriate.

(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) Anytime prior to the conclusion of the period of supervision, the prosecutor or the juvenile's juvenile court community supervision counselor may file a motion with the court requesting the court revoke the deferred disposition based on the juvenile's lack of compliance or treat the juvenile's lack of compliance as a violation pursuant to RCW 13.40.200.

(b) If the court finds the juvenile failed to comply with the terms of the deferred disposition, the court may:

- (i) Revoke the deferred disposition and enter an order of disposition; or
- (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

(8) At any time following deferral of disposition the court may, following a hearing, continue supervision for an additional one-year period for good cause.

(9)(a) At the conclusion of the period of supervision, the court shall determine whether the juvenile is entitled to dismissal of the deferred disposition only when the court finds:

- (i) The deferred disposition has not been previously revoked;
- (ii) The juvenile has completed the terms of supervision;

(iii) There are no pending motions concerning lack of compliance pursuant to subsection (7) of this section; and

(iv) The juvenile has either paid the full amount of restitution, or, made a good faith effort to pay the full amount of restitution during the period of supervision.

(b) If the court finds the juvenile is entitled to dismissal of the deferred disposition pursuant to (a) of this subsection, the juvenile'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. Whenever a case is dismissed with restitution still owing, the court shall enter a restitution order pursuant to RCW 13.40.190 for any unpaid restitution. Jurisdiction to enforce payment and modify terms of the restitution order shall be the same as those set forth in RCW 13.40.190.

(c) If the court finds the juvenile is not entitled to dismissal of the deferred disposition pursuant to (a) of this subsection, the court shall revoke the deferred disposition and enter an order of disposition. A deferred disposition shall remain a conviction unless the case is dismissed and the conviction is vacated pursuant to (b) of this subsection or sealed pursuant to RCW 13.50.050.

(10)(a)(i) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is eighteen years of age or older and the full amount of restitution ordered has been paid, the court shall enter a written order sealing the case.

(ii) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is not eighteen years of age or older and full restitution ordered has been paid, the court shall schedule an administrative sealing hearing to take place no later than thirty days after the respondent's eighteenth birthday, at which time the court shall enter a written order sealing the case. The respondent's presence at the administrative sealing hearing is not required.

(iii) Any deferred disposition vacated prior to June 7, 2012, is not subject to sealing under this subsection.



(b) Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW 13.50.050 (11) and (12).

(c) Records sealed under this provision shall have the same legal status as records sealed under RCW 13.50.050.

**Sec. 3.** RCW 13.40.210 and 2009 c 187 s 1 are each amended to read as follows:

(1) The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section and for offenders who receive a juvenile residential commitment sentence (~~(e)~~)

for theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission 1. A juvenile adjudicated for unlawful possession of a firearm, possession of a stolen firearm, theft of a firearm, or drive-by shooting may participate in aggression replacement training, functional family therapy, or functional family parole aftercare if the juvenile meets eligibility requirements for these services. The decision to place an offender ~~((on))~~ in an evidence-based parole program shall be based on an assessment by the department of the offender's risk for reoffending upon release and an assessment of the ongoing treatment needs of the juvenile. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community restitution. Community restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and

to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) The secretary may modify parole and order any of the conditions or may return the offender to confinement for up to twenty-four weeks if the offender was sentenced for a sex offense as defined under RCW 9A.44.130 and is known to have violated the terms of parole. Confinement beyond thirty days is intended to only be used for a small and limited number of sex offenders. It shall only be used when other graduated sanctions or interventions have not been effective or the behavior is so egregious it warrants the use of the higher level intervention and the violation: (i) Is a known pattern of behavior consistent with a previous sex offense that puts the youth at high risk for reoffending sexually; (ii) consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or (iii) requires a review under chapter 71.09 RCW, due to a recent overt act. The total number of days of confinement for violations of parole conditions during the parole period shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying offense pursuant to RCW 13.40.0357. The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive twenty-four week periods of confinement for each parole violation. The department is authorized to engage in rule making pursuant to chapter 34.05 RCW, to implement this subsection, including narrowly defining the behaviors that could lead to this higher level intervention.

(c) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section.

**NEW SECTION. Sec. 4.** A new section is added to chapter 13.40 RCW to read as follows:

(1)(a) The juvenile rehabilitation administration of the department of social and health services must compile and analyze data regarding juvenile offenders who have been found to have committed the offense of unlawful possession of a firearm under RCW 9.41.040 and made their initial contact with the criminal justice system between January 1, 2005, and December 31, 2013. Information compiled and analyzed must include:

(i) Previous and subsequent criminal offenses committed by the offenders as juveniles or adults;

(ii) Where applicable, treatment interventions provided to the offenders as juveniles, including the nature of provided interventions and whether the offenders completed the interventions, if known; and

(iii) Gang association of the offenders, if known.

(b) The department of corrections and the caseload forecast council must provide any information necessary to assist the juvenile rehabilitation administration in compiling the data required for this purpose. Information provided may include individual identifier level data, however such data must remain confidential and must not be disseminated for purposes other than as identified in this section or otherwise permitted by law.

(2) The juvenile rehabilitation administration shall report its findings to the appropriate committees of the legislature no later than October 1, 2014.

**Sec. 5.** RCW 13.50.010 and 2013 c 23 s 6 are each amended to read as follows:

(1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. ~~((The court shall release to the caseload forecast council records needed for its research and data-gathering functions. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved.))~~ Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) The court shall release to the caseload forecast council the records needed for its research and data-gathering functions. Access to caseload forecast data may be permitted by the council for research purposes only if the anonymity of all persons mentioned in the records or information will be preserved.

(10) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

~~((10))~~ (11) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombuds.

~~((H))~~ (12) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.050 (17) and (18) and 13.50.100(3).

~~((H))~~ (13) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

Passed by the House March 10, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 118

[Substitute House Bill 2175]

### TELECOMMUNICATIONS INDUSTRY—SMALL CELL NETWORKS— USE OF RIGHT-OF-WAY

AN ACT Relating to removing barriers to economic development in the telecommunications industry; and amending RCW 80.36.375 and 35.21.860.

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

**Sec. 1.** RCW 80.36.375 and 1997 c 219 s 2 are each amended to read as follows:

(1) If a personal wireless service provider applies to site several microcells ~~((and/or))~~, minor facilities, or a small cell network in a single geographical area:

(a) If one or more of the microcells and/or minor facilities are not exempt from the requirements of RCW 43.21C.030(2)(c), local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents required by chapter 43.21C RCW that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions under chapter 43.21C RCW regarding all the microcells and/or minor facilities in a single administrative proceeding; ~~((and))~~

(b) Local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents for land use permits that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions regarding land use permits for all the microcells and/or minor facilities in a single administrative proceeding; and

(c) For small cell networks involving multiple individual small cell facilities, local governmental entities may allow the applicant, if the applicant so chooses, to file a consolidated application and receive a single permit for the

small cell network in a single jurisdiction instead of filing separate applications for each individual small cell facility.

(2) For the purposes of this section:

(a) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(b) "Microcell" means a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.

(c) "Minor facility" means a wireless communication facility consisting of up to three antennas, each of which is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length; and the associated equipment cabinet that is six feet or less in height and no more than forty-eight square feet in floor area.

(d) "Small cell facility" means a personal wireless services facility that meets both of the following qualifications:

(i) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and

(ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

(e) "Small cell network" means a collection of interrelated small cell facilities designed to deliver personal wireless services.

**Sec. 2.** RCW 35.21.860 and 2007 c 6 s 1020 are each amended to read as follows:

(1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.16.010, or service provider for use of the right-of-way, except:

(a) A tax authorized by RCW 35.21.865 may be imposed;

(b) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;

(c) Taxes permitted by state law on service providers;

(d) Franchise requirements and fees for cable television services as allowed by federal law; and

(e) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

(i) The placement of new structures in the right-of-way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;

(ii) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(iii) The placement of personal wireless facilities on structures owned by the city or town located in the right-of-way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town.

A city or town is not required to approve the use permit for the placement of a facility for personal wireless services that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section.

Passed by the House March 13, 2014.

Passed by the Senate March 12, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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## CHAPTER 119

[Engrossed Substitute House Bill 2246]

### MERCURY-CONTAINING LIGHTS PRODUCT STEWARDSHIP PROGRAM

AN ACT Relating to financing for stewardship of mercury-containing lights; amending RCW 70.275.030, 70.275.040, and 70.275.050; reenacting and amending RCW 70.275.020; adding a new section to chapter 70.275 RCW; adding new sections to chapter 43.131 RCW; adding a new section to chapter 70.95M RCW; creating a new section; recodifying RCW 70.275.080; repealing RCW 70.275.120; providing an effective date; and providing a contingent effective date.

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



**NEW SECTION. Sec. 1.** The legislature finds that additional flexibility is needed for mercury-containing light manufacturers to comply with the requirements of chapter 70.275 RCW in order to provide a sustainable funding mechanism and provide effective state protections to producer-operated product stewardship programs under chapter 70.275 RCW.

**Sec. 2.** RCW 70.275.020 and 2010 c 130 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

(2) "Collection" or "collect" means, except for persons involved in mail-back programs:

(a) The activity of accumulating any amount of mercury-containing lights at a location other than the location where the lights are used by covered entities, and includes curbside collection activities, household hazardous waste facilities, and other registered drop-off locations; and

(b) The activity of transporting mercury-containing lights in the state, where the transporter is not a generator of unwanted mercury-containing lights, to a location for purposes of accumulation.

(3) "Covered entities" means:

(a) A ~~((single-family or a multifamily household generator and persons that deliver no more than fifteen))~~ household generator or other person who purchases mercury-containing lights at retail and delivers no more than ten mercury-containing lights to registered collectors for a product stewardship program ((during a ninety-day period)) on any given day; and

(b) A ~~((single-family or a multifamily household generator and persons that utilize))~~ household generator or other person who purchases mercury-containing lights at retail and utilizes a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and ~~((that))~~ discards no more than fifteen mercury-containing lights into those programs ~~((during a ninety-day period))~~ on any given day.

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

(5) "Final disposition" means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in permitted facilities.

(6) "Hazardous substances" or "hazardous materials" means those substances or materials identified by rules adopted under chapter 70.105 RCW.

(7) "Mail-back program" means the use of a prepaid postage container with mercury vapor barrier packaging that is used for the collection and recycling of mercury-containing lights from covered entities as part of a product stewardship program and is transported by the United States postal service or a common carrier.

(8) "Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

(9) "Mercury vapor barrier packaging" means sealable containers that are specifically designed for the storage, handling, and transport of mercury-containing lights in order to prevent the escape of mercury into the environment by volatilization or any other means, and that meet the requirements for transporting by the United States postal service or a common carrier.

(10) "Orphan product" means a mercury-containing light that lacks a producer's brand, or for which the producer is no longer in business and has no successor in interest, or that bears a brand for which the department cannot identify an owner.

(11) "Person" means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

(12) "Processing" means recovering materials from unwanted products for use as feedstock in new products. Processing must occur at permitted facilities.

(13) "Producer" means a person that:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, ~~((except for persons whose primary business is retail sales))~~ unless the brand owner is a retailer whose mercury-containing light was supplied by another producer participating in a stewardship program under this chapter;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this subsection and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this subsection do not apply, makes or made ~~((an unbranded))~~ a mercury-containing light that is sold or has been sold in or into Washington state; or

(d)(i) Sells or sold at wholesale or retail a mercury-containing light; (ii) does not have legal ownership of the brand; and (iii) elects to fulfill the responsibilities of the producer for that product.

(14) "Product stewardship" means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and providing for the collection, transporting, reusing, recycling, processing, and final disposition of their products.

(15) "Product stewardship plan" or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented.

(16) "Product stewardship program" or "program" means the methods, systems, and services financed in the manner provided for under RCW 70.275.050 and provided by producers of mercury-containing lights generated by covered entities that addresses product stewardship and includes ~~((collecting, transporting, reusing))~~ arranging for the collection, transportation, recycling, processing, and final disposition of unwanted mercury-containing lights, including ((a fair share of)) orphan products.

(17) "Recovery" means the collection and transportation of unwanted mercury-containing lights under this chapter.

(18)(a) "Recycling" means transforming or remanufacturing unwanted products into usable or marketable materials for use other than landfill disposal or incineration.

(b) "Recycling" does not include energy recovery or energy generation by means of combusting unwanted products with or without other waste.

(19) "Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.

(20) "Residuals" means nonrecyclable materials left over from processing an unwanted product.

(21) "Retailer" means a person who offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(22)(a) "Reuse" means a change in ownership of a mercury-containing light or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, or for use again, as in shipping materials, by the generator of the shipping materials.

(b) "Reuse" does not include dismantling of products for the purpose of recycling.

(23) "Stakeholder" means a person who may have an interest in or be affected by a product stewardship program.

(24) "Stewardship organization" means an organization designated by a producer or group of producers to act as an agent on behalf of each producer to operate a product stewardship program.

(25) "Unwanted product" means a mercury-containing light no longer wanted by its owner or that has been abandoned, discarded, or is intended to be discarded by its owner.

(26) "Environmental handling charge" or "charge" means the charge approved by the department to be applied to each mercury-containing light to be sold at retail in or into Washington state. The environmental handling charge must cover all administrative and operational costs associated with the product stewardship program, including the fee for the department's administration and enforcement.

**Sec. 3.** RCW 70.275.030 and 2010 c 130 s 3 are each amended to read as follows:

(1) Every producer of mercury-containing lights sold in or into Washington state for ~~((residential use must fully finance and participate in a product stewardship program for that product, including the department's costs for administering and enforcing this chapter.~~

(2) Every producer must:

(a) ~~Participate in a product stewardship program approved by the department and operated by a product stewardship organization contracted by the department. All producers must finance and participate in the plan operated by the product stewardship organization, unless the producer obtains department approval for an independent plan as described in (b) of this subsection; or~~

(b) ~~Finance and operate, either individually or jointly with other producers, a product stewardship program approved by the department.~~

(3) ~~A producer, group of producers, or product stewardship organization funded by producers must pay all administrative and operational costs associated with their program or programs, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a producer, group of producers, or product stewardship organization~~

shall finance)) retail sale in Washington state must participate in a product stewardship program for those products, operated by a stewardship organization and financed in the manner provided by RCW 70.275.050. Every such producer must inform the department of the producer's participation in a product stewardship program by including the producer's name in a plan submitted to the department by a stewardship organization as required by RCW 70.275.040. Producers must satisfy these participation obligations individually or may do so jointly with other producers.

(2) A stewardship organization operating a product stewardship program must pay all administrative and operational costs associated with its program with revenues received from the environmental handling charge described in RCW 70.275.050. The stewardship organization's administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights. However, a stewardship organization may offer incentives or payments to collectors. The stewardship organization's administrative and operational costs do not include the collection costs associated with curbside and mail-back collection programs. The stewardship organization must arrange for collection service at locations described in subsection (4) of this section, which may include household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations. No such entity is required to provide collection services at their location. For curbside and mail-back programs, a stewardship organization must pay the costs of transporting mercury-containing lights from accumulation points and for processing mercury-containing lights collected by curbside and mail-back programs. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations, a ((producer, group of producers, or product)) stewardship organization ((shall finance)) must pay the costs of ((collection,)) packaging and shipping materials as required under RCW 70.275.070 or must compensate collectors for the costs of those materials, and must pay the costs of transportation(;) and processing of mercury-containing lights collected ((at)) from the collection locations.

((4)) (3) Product stewardship programs shall collect unwanted mercury-containing lights delivered from covered entities for ((reuse,)) recycling, processing, or final disposition, and not charge a fee when lights are dropped off or delivered into the program.

((5)) (4) Product stewardship programs shall provide, at a minimum, no cost services in all cities in the state with populations greater than ten thousand and all counties of the state on an ongoing, year-round basis.

((6)) (5) Product stewardship programs shall promote the safe handling and recycling of mercury-containing lights to the public, including producing and offering point-of-sale educational materials to retailers of mercury-containing lights and point-of-return educational materials to collection locations.

(6) All product stewardship programs operated under approved plans must recover their fair share of unwanted covered products as determined by the department.

(7) The department or its designee may inspect, audit, or review audits of processing and disposal facilities used to fulfill the requirements of a product stewardship program.

(8) No product stewardship program required under this chapter may use federal or state prison labor for processing unwanted products.

(9) Product stewardship programs for mercury-containing lights must be fully implemented by January 1, ~~((2013))~~ 2015.

**Sec. 4.** RCW 70.275.040 and 2010 c 130 s 4 are each amended to read as follows:

(1) ~~((A producer, group of producers, or product stewardship program submitting a proposed product stewardship plan under RCW 70.275.030(2)(b) must submit that plan by January 1st of the year prior to the planned implementation.))~~ On June 1st of the year prior to implementation, each producer must ensure that a stewardship organization submits a proposed product stewardship plan on the producer's behalf to the department for approval. Plans approved by the department must be implemented by January 1st of the following calendar year.

(2) The department shall establish rules for plan content. Plans must include but are not limited to:

(a) All necessary information to inform the department about the plan operator and participating producers and their brands;

(b) The management and organization of the product stewardship program that will oversee the collection, transportation, and processing services;

(c) The identity of collection, transportation, and processing service providers, including a description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as an appropriate collection mechanism;

(d) How the product stewardship program will seek to use businesses within the state, including transportation services, retailers, collection sites and services, existing curbside collection services, existing mail-back services, and processing facilities;

(e) A description of how the public will be informed about the ~~((recycling program))~~ product stewardship program, including how consumers will be provided with information describing collection opportunities for unwanted mercury-containing lights from covered entities and safe handling of mercury-containing lights, waste prevention, and recycling. The description must also include information to make consumers aware that an environmental handling charge has been added to the purchase price of mercury-containing lights sold at retail to fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be described as a department recycling fee or charge at the point of retail sale;

(f) A description of the financing system required under RCW 70.275.050;

(g) How mercury and other hazardous substances will be handled for collection through final disposition;

(h) A public review and comment process; and

(i) Any other information deemed necessary by the department to ensure an effective mercury light product stewardship program that is in compliance with all applicable laws and rules.

(3) All plans submitted to the department must be made available for public review on the department's web site and at the department's headquarters.

(4) At least two years from the start of the product stewardship program and once every four years thereafter, ~~((a producer, group of producers, or product))~~ each stewardship organization operating a product stewardship program must update its product stewardship plan and submit the updated plan to the department for review and approval according to rules adopted by the department.

~~(5) ((Each product stewardship program shall submit an annual report to the department describing the results of implementing their plan for the prior year. The department may adopt rules for reporting requirements. All reports submitted to the department must be made available for public review))~~ By June 1, 2016, and each June 1st thereafter, each stewardship organization must submit an annual report to the department describing the results of implementing the stewardship organization's plan for the prior calendar year, including an independent financial audit. The department may adopt rules for reporting requirements. Financial information included in the annual report must include but is not limited to:

(a) The amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

(b) Identification of confidential information pursuant to RCW 43.21A.160 submitted in the annual report; and

(c) The cost of the mercury-containing lights product stewardship program, including line item costs for:

(i) Program operations;

(ii) Communications, including media, printing and fulfillment, public relations, and other education and outreach projects;

(iii) Administration, including administrative personnel costs, travel, compliance and auditing, legal services, banking services, insurance, and other administrative services and supplies, and stewardship organization corporate expenses; and

(iv) Amount of unallocated reserve funds.

(6) Beginning in 2023 every stewardship organization must include in its annual report an analysis of the percent of total sales of lights sold at retail to covered entities in Washington that mercury-containing lights constitute, the estimated number of mercury-containing lights in use by covered entities in the state, and the projected number of unwanted mercury-containing lights to be recycled in future years.

(7) All plans and reports submitted to the department must be made available for public review, excluding sections determined to be confidential pursuant to RCW 43.21A.160, on the department's web site and at the department's headquarters.

**Sec. 5.** RCW 70.275.050 and 2010 c 130 s 5 are each amended to read as follows:

~~(1) ((All producers that sell mercury-containing lights in or into the state of Washington are responsible for financing the mercury-containing light recycling program required by RCW 70.275.030.~~

~~(2) Each producer shall pay fifteen thousand dollars to the department to contract for a product stewardship program to be operated by a product~~

stewardship organization. The department shall retain five thousand dollars of the fifteen thousand dollars for administration and enforcement costs.

~~(3) A producer or producers participating in an independent plan, as permitted under RCW 70.275.030(2)(b), must pay the full cost of operation. Each producer participating in an approved independent plan shall pay an annual fee of five thousand dollars to the department for administration and enforcement costs.)~~ Each stewardship organization must recommend to the department an environmental handling charge to be added to the price of each mercury-containing light sold in or into the state of Washington for sale at retail. The environmental handling charge must be designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization, including the department's annual fee required by subsection (5) of this section, and a prudent reserve. The stewardship organization must consult with collectors, retailers, recyclers, and each of its participating producers in developing its recommended environmental handling charge. The environmental handling charge may, but is not required to, vary by the type of mercury-containing light. In developing its recommended environmental handling charge, the stewardship organization must take into consideration and report to the department:

(a) The anticipated number of mercury-containing lights that will be sold to covered entities in the state at retail during the relevant period;

(b) The number of unwanted mercury-containing lights delivered from covered entities expected to be recycled during the relevant period;

(c) The operational costs of the stewardship organization as described in RCW 70.275.030(2);

(d) The administrative costs of the stewardship organization including the department's annual fee, described in subsection (5) of this section; and

(e) The cost of other stewardship program elements including public outreach.

(2) The department must review, adjust if necessary, and approve the stewardship organization's recommended environmental handling charge within sixty days of submittal. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, collectors, recyclers, and other entities.

(3) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington retailers for sale at retail, and each Washington retailer shall add the charge to the purchase price of all mercury-containing lights sold at retail in this state, and the producer shall remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in this state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The

stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(4) At any time, a stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department's review, adjustment, if necessary, and approval under subsection (2) of this section to ensure that there is sufficient revenue to fund the cost of the program, current deficits, or projected needed reserves for the next year. The department must review the stewardship organization's recommended environmental handling charge and must adjust or approve the recommended charge within thirty days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in subsection (1) of this section.

(5) Beginning March 1, 2015, and each year thereafter, each stewardship organization shall pay to the department an annual fee equivalent to five thousand dollars for each participating producer to cover the department's administrative and enforcement costs. The amount paid under this section must be deposited into the product stewardship programs account created in RCW 70.275.130.

**NEW SECTION. Sec. 6.** A new section is added to chapter 70.275 RCW to read as follows:

(1) It is the intent of the legislature that a producer, group of producers, stewardship organization preparing, submitting, and implementing a mercury-containing light product stewardship program pursuant to this chapter, as well as participating entities in the distribution chain, including retailers and distributors, are granted immunity, individually and jointly, from federal and state antitrust liability that might otherwise apply to the activities reasonably necessary for implementation and compliance with this chapter. It is further the intent of the legislature that the activities of the producer, group of producers, stewardship organization, and entities in the distribution chain, including retailers and distributors, in implementing and complying with the provisions of this chapter may not be considered to be in restraint of trade, a conspiracy, or combination thereof, or any other unlawful activity in violation of any provisions of federal or state antitrust laws.

(2) The department shall actively supervise the conduct of the stewardship organization, the producers of mercury-containing lights, and entities in the distribution chain in determination and implementation of the environmental handling charge authorized by this chapter.

**NEW SECTION. Sec. 7.** A new section is added to chapter 43.131 RCW to read as follows:

The mercury-containing lights product stewardship program as established under chapter 70.275 RCW is terminated July 1, 2025, as provided in section 8 of this act.

**NEW SECTION. Sec. 8.** A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2026:

(1) RCW 70.275.010 (Findings—Purpose) and 2010 c 130 s 1;



(2) RCW 70.275.020 (Definitions) and 2014 c . . . s 2 (section 2 of this act) & 2010 c 130 s 2;

(3) RCW 70.275.030 (Product stewardship program) and 2014 c . . . s 3 (section 3 of this act) & 2010 c 130 s 3;

(4) RCW 70.275.040 (Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report) and 2014 c . . . s 4 (section 4 of this act) & 2010 c 130 s 4;

(5) RCW 70.275.050 (Financing the mercury-containing light recycling program) and 2014 c . . . s 5 (section 5 of this act) & 2010 c 130 s 5;

(6) RCW 70.275.060 (Collection and management of mercury) and 2010 c 130 s 6;

(7) RCW 70.275.070 (Collectors of unwanted mercury-containing lights—Duties) and 2010 c 130 s 7;

(8) RCW 70.275.090 (Producers must participate in an approved product stewardship program) and 2010 c 130 s 9;

(9) RCW 70.275.100 (Written warning—Penalty—Appeal) and 2010 c 130 s 10;

(10) RCW 70.275.110 (Department's web site to list producers participating in product stewardship plan—Required participation in a product stewardship plan—Written warning—Penalty—Rules—Exemptions) and 2010 c 130 s 11;

(11) RCW 70.275.130 (Product stewardship programs account) and 2010 c 130 s 13;

(12) RCW 70.275.140 (Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging) and 2010 c 130 s 14;

(13) RCW 70.275.150 (Application of chapter to the Washington utilities and transportation commission) and 2010 c 130 s 15;

(14) RCW 70.275.160 (Application of chapter to entities regulated under chapter 70.105 RCW) and 2010 c 130 s 16;

(15) RCW 70.275.900 (Chapter liberally construed) and 2010 c 130 s 17;

(16) RCW 70.275.901 (Severability—2010 c 130) and 2010 c 130 s 21; and

(17) RCW 70.275.— and 2014 c . . . s 6 (section 6 of this act).

**NEW SECTION. Sec. 9.** RCW 70.275.120 (Producers must pay annual fees) and 2010 c 130 s 12 are each repealed.

**NEW SECTION. Sec. 10.** (1) RCW 70.275.080 is recodified as a section in chapter 70.95M RCW.

(2) This section takes effect July 1, 2026, only if chapter 70.275 RCW is repealed as provided for in section 8 of this act.

Passed by the House February 13, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 120

[Second Substitute House Bill 2251]

## FISH BARRIER REMOVALS

AN ACT Relating to fish barrier removals; amending RCW 77.55.181, 77.95.180, 77.95.170, 77.95.160, 19.27.490, 35.21.404, 35.63.230, 35A.21.290, 35A.63.250, 36.70.982, 36.70.992, 36.70A.460, and 43.21C.0382; adding new sections to chapter 77.95 RCW; creating a new section; and providing an expiration date.

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

**Sec. 1.** RCW 77.55.181 and 2010 c 210 s 29 are each amended to read as follows:

(1)(a) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under ~~((a) and (b) of)~~ this ~~((subsection:~~

~~(a) A fish habitat enhancement project)~~ section and must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made or caused fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

~~(b)~~ The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety~~(; and)~~.

~~((b))~~ (c) A fish habitat enhancement project must be approved in one of the following ways in order to receive the permit review and approval process created in this section:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration; ~~(and)~~

(vii) Through the department of transportation's environmental retrofit program as a stand-alone fish passage barrier correction project;

(viii) Through a local, state, or federally approved fish barrier removal grant program designed to assist local governments in implementing stand-alone fish passage barrier corrections;

(ix) By a city or county for a stand-alone fish passage barrier correction project funded by the city or county; and

(x) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government.

(b) Local governments shall accept the application as notice of the proposed project. The department shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts.

(c) Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit.

(d) If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

~~((b))~~ (e) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may appeal the decision as provided in RCW 77.55.021(~~((4))~~) (8).

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section.

(5) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish enhancement project permitted by the department under the criteria of this section except upon proof of gross negligence or willful or wanton misconduct.

**Sec. 2.** RCW 77.95.180 and 2010 1st sp.s. c 7 s 83 are each amended to read as follows:

(1)(a) To maximize available state resources, the department and the department of transportation (~~(shall)~~) **must** work in partnership to identify (~~(cooperative)~~) **and complete** projects to eliminate fish passage barriers caused by state roads and highways.

(b) The partnership between the department and the department of transportation must be based on the principle of maximizing habitat recovery through a coordinated investment strategy that, to the maximum extent practical and allowable, prioritizes opportunities: To correct multiple fish barriers in whole streams rather than through individual, isolated projects; to coordinate with other entities sponsoring barrier removals, such as regional fisheries enhancement groups incorporated under this chapter, in a manner that achieves the greatest cost savings to all parties; and to correct barriers located furthest downstream in a stream system. Examples of this principle include:

(i) Coordinating with all relevant state agencies and local governments to maximize the habitat recovery value of the investments made by the state to correct fish passage barriers;

(ii) Maximizing the habitat recovery value of investments made by public and private forest landowners through the road maintenance and abandonment planning process outlined in the forest practices rules, as that term is defined in RCW 76.09.020;

(iii) Recognizing that many of the barriers owned by the state are located in the same stream systems as barriers that are owned by cities and counties with limited financial resources for correction and that state-local partnership opportunities should be sought to address these barriers; and

(iv) Recognizing the need to continue investments in the family forest fish passage program created pursuant to RCW 76.13.150 and other efforts to address fish passage barriers owned by private parties that are in the same stream systems as barriers owned by public entities.

(2) The department (~~(of transportation)~~) shall also provide engineering and other technical services to assist (~~(regional fisheries enhancement groups)~~) nonstate barrier owners with fish passage barrier removal projects, provided that the barrier removal projects have been identified as a priority by the department (~~(of fish and wildlife)~~) and the department (~~(of transportation)~~) has received an appropriation to continue (~~(the)~~) that component of a fish barrier removal program.

(3) Nothing in this section is intended to:

(a) Alter the process and prioritization methods used in the implementation of the forest practices rules, as that term is defined in RCW 76.09.020, or the family forest fish passage program, created pursuant to RCW 76.13.150, that provides public cost assistance to small forest landowners associated with the road maintenance and abandonment processes; or

(b) Prohibit or delay fish barrier projects undertaken by the department of transportation or another state agency that are a component of an overall transportation improvement project or that are being undertaken as a direct result of state law, federal law, or a court order. However, the department of transportation or another state agency is required to work in partnership with the fish passage barrier removal board created in RCW 77.95.160 to ensure that the scheduling, staging, and implementation of these projects are, to maximum extent practicable, consistent with the coordinated and prioritized approach adopted by the fish passage barrier removal board.

**Sec. 3.** RCW 77.95.170 and 1999 c 242 s 4 are each amended to read as follows:

(1) The department (~~(of transportation and the department of fish and wildlife)~~) may (~~(administer and)~~) coordinate with the recreation and conservation office in the administration of all state grant programs specifically designed to assist state agencies, (~~local governments,~~) private landowners, tribes, organizations, and volunteer groups in identifying and removing impediments to salmonid fish passage. The transportation improvement board may administer all grant programs specifically designed to assist cities, counties, and other units of local governments with fish passage barrier corrections associated with transportation projects. All grant programs must be administered and be consistent with the following:

(a) Salmonid-related corrective projects, inventory, assessment, and prioritization efforts;

(b) Salmonid projects subject to a competitive application process; and

(c) A minimum dollar match rate that is consistent with the funding authority's criteria. If no funding match is specified, a match amount of at least twenty-five percent per project is required. For local, private, and volunteer projects, in-kind contributions may be counted toward the match requirement.

(2) Priority shall be given to projects that (~~(immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. Priority shall also be given to project applications that are coordinated with other efforts within a watershed)~~) match the principles provided in RCW 77.95.180.

(3) (~~(Except for projects administered by the transportation improvement board,)~~) All projects subject to this section shall be reviewed and approved by the fish passage barrier removal (~~(task force)~~) board created in RCW 77.95.160 or an alternative oversight committee designated by the state legislature.

(4) Other agencies that administer natural resource-based grant programs (~~(that may include fish passage barrier removal projects)~~) shall use fish passage selection criteria that are consistent with this section when those programs are addressing fish passage barrier removal projects.

(5)(a) The (~~(departments of transportation and fish and wildlife)~~) department shall establish a centralized database directory of all fish passage barrier information. The database directory must include, but is not limited to, existing fish passage inventories, fish passage projects, grant program applications, and other databases. These data must be used to coordinate and assist in habitat recovery and project mitigation projects.

(b) The department must develop a barrier inventory training program that qualifies participants to perform barrier inventories and develop data that enhance the centralized database. The department may decide the qualifications for participation. However, employees and volunteers of conservation districts and regional salmon recovery groups must be given priority consideration.

**Sec. 4.** RCW 77.95.160 and 2000 c 107 s 110 are each amended to read as follows:

(1) The department (~~(and the department of transportation)~~) shall (~~(convene)~~) maintain a fish passage barrier removal (~~(task force)~~) board. (~~(The task force shall consist of one representative each from the department, the department of transportation, the department of ecology, tribes, cities, counties, a business organization, an environmental organization, regional fisheries enhancement groups, and other interested entities as deemed appropriate by the~~

~~cochairs. The persons representing the department and the department of transportation shall serve as cochairs of the task force and shall appoint members to the task force. The task force shall make recommendations to expand the program in RCW 77.95.180.)~~ The board must be composed of a representative from the department, the department of transportation, cities, counties, the governor's salmon recovery office, tribal governments, and the department of natural resources. The representative of the department must serve as chair of the board and may expand the membership of the board to representatives of other governments, stakeholders, and interested entities.

(2)(a) The duty of the board is to identify and expedite the removal of human-made or caused impediments to anadromous fish passage in the most efficient manner practical(~~(--Program))~~ through the development of a coordinated approach and schedule that identifies and prioritizes the projects necessary to eliminate fish passage barriers caused by state and local roads and highways and barriers owned by private parties.

(b) The coordinated approach must address fish passage barrier removals in all areas of the state in a manner that is consistent with a recognition that scheduling and prioritization is necessary.

(c) The board must coordinate and mutually share information, when appropriate, with:

(i) Other fish passage correction programs, including local salmon recovery plan implementation efforts through the governor's salmon recovery office;

(ii) The applicable conservation districts when developing schedules and priorities within set geographic areas or counties; and

(iii) The recreation and conservation office to ensure that barrier removal methodologies are consistent with, and maximizing the value of, other salmon recovery efforts and habitat improvements that are not primarily based on the removal of barriers.

(d) Recommendations (~~shall~~) must include ((a)) proposed funding mechanisms and other necessary mechanisms and methodologies to coordinate (~~and prioritize~~) state, tribal, local, and volunteer barrier removal efforts within each water resource inventory area and satisfy the principles of RCW 77.95.180. To the degree practicable, the board must utilize the database created in RCW 77.95.170 and information on fish barriers developed by conservation districts to guide methodology development. The board may consider recommendations by interested entities from the private sector and regional fisheries enhancement groups.

(e) When developing a prioritization methodology under this section, the board shall consider:

(i) Projects benefiting depressed, threatened, and endangered stocks;

(ii) Projects providing access to available and high quality spawning and rearing habitat;

(iii) Correcting the lowest barriers within the stream first;

(iv) Whether an existing culvert is a full or partial barrier;

(v) Projects that are coordinated with other adjacent barrier removal projects; and

(vi) Projects that address replacement of infrastructure associated with flooding, erosion, or other environmental damage. (~~A priority shall be given to projects that immediately increase access to available and improved spawning~~

~~and rearing habitat for depressed, threatened, and endangered stocks. The department or the department of transportation may contract with cities and counties to assist in the identification and removal of impediments to anadromous fish passage.))~~

(f) The board may not make decisions on fish passage standards or categorize as impassible culverts or other infrastructure developments that have been deemed passable by the department.

*\*NEW SECTION. Sec. 5. A new section is added to chapter 77.95 RCW to read as follows:*

*The department must implement RCW 77.95.160 and 77.95.180 within existing funds.*

*\*Sec. 5 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 6. A new section is added to chapter 77.95 RCW to read as follows:

The department may contract with cities and counties to assist in the identification and removal of impediments to fish passage.

NEW SECTION. Sec. 7. (1) The department of fish and wildlife must initiate contact with the United States army corps of engineers, the national oceanic and atmospheric administration, and, if necessary, the United States fish and wildlife service to explore the feasibility of bundling multiple transportation-related fish barrier removal projects under any available nationwide permits for the purpose of achieving streamlined federal permitting with a reduced processing time.

(2) The department of fish and wildlife must report back to the legislature, consistent with RCW 43.01.036, by October 31, 2016, summarizing the information gathered and any progress made towards using the bundling concept to streamline permitting for transportation-related fish barrier removal projects.

(3) This section must be implemented by the department of fish and wildlife using existing funds.

(4) This section expires June 30, 2017.

**Sec. 8.** RCW 19.27.490 and 2003 c 39 s 11 are each amended to read as follows:

A fish habitat enhancement project meeting the criteria of RCW ~~((77.55.290(1)))~~ 77.55.181 is not subject to grading permits, inspections, or fees and shall be reviewed according to the provisions of RCW ~~((77.55.290))~~ 77.55.181.

**Sec. 9.** RCW 35.21.404 and 2003 c 39 s 14 are each amended to read as follows:

A city or town is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW ~~((77.55.290))~~ 77.55.181 and has been permitted by the department of fish and wildlife.

**Sec. 10.** RCW 35.63.230 and 2003 c 39 s 15 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the

criteria of RCW ((~~77.55.290(1)~~) 77.55.181 shall be reviewed and approved according to the provisions of RCW ((~~77.55.290~~) 77.55.181.

**Sec. 11.** RCW 35A.21.290 and 2003 c 39 s 16 are each amended to read as follows:

A code city is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW ((~~77.55.290~~) 77.55.181 and has been permitted by the department of fish and wildlife.

**Sec. 12.** RCW 35A.63.250 and 2003 c 39 s 17 are each amended to read as follows:

(1) A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510.

(2) A fish habitat enhancement project meeting the criteria of RCW ((~~77.55.290(1)~~) 77.55.181 shall be reviewed and approved according to the provisions of RCW ((~~77.55.290~~) 77.55.181.

**Sec. 13.** RCW 36.70.982 and 2003 c 39 s 19 are each amended to read as follows:

A county is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW ((~~77.55.290~~) 77.55.181 and has been permitted by the department of fish and wildlife.

**Sec. 14.** RCW 36.70.992 and 2003 c 39 s 20 are each amended to read as follows:

(1) A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510.

(2) A fish habitat enhancement project meeting the criteria of RCW ((~~77.55.290(1)~~) 77.55.181 shall be reviewed and approved according to the provisions of RCW ((~~77.55.290~~) 77.55.181.

**Sec. 15.** RCW 36.70A.460 and 2003 c 39 s 21 are each amended to read as follows:

(1) A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510.

(2) A fish habitat enhancement project meeting the criteria of RCW ((~~77.55.290(1)~~) 77.55.181 shall be reviewed and approved according to the provisions of RCW ((~~77.55.290~~) 77.55.181.

**Sec. 16.** RCW 43.21C.0382 and 2003 c 39 s 23 are each amended to read as follows:

(1) Decisions pertaining to watershed restoration projects as defined in RCW 89.08.460 are not subject to the requirements of RCW 43.21C.030(2)(c).

(2) Decisions pertaining to fish habitat enhancement projects meeting the criteria of RCW ((~~77.55.290(1)~~) 77.55.181 and being reviewed and approved according to the provisions of RCW ((~~77.55.290~~) 77.55.181 are not subject to the requirements of RCW 43.21C.030(2)(c).

Passed by the House March 10, 2014.

Passed by the Senate March 7, 2014.



Approved by the Governor March 28, 2014, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 31, 2014.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 5, Second Substitute House Bill No. 2251 entitled:

"AN ACT Relating to fish barrier removals."

Section 5 of Second Substitute House Bill 2251 directs the Department of Fish and Wildlife to accomplish significant portions of the bill within existing funds. The Department will likely incur additional costs in future biennium as a result of this bill that it cannot absorb without undue hardship on existing programs. For this reason I am vetoing Section 5.

For these reasons I have vetoed Section 5 of Second Substitute House Bill No. 2251.

With the exception of Section 5, Second Substitute House Bill No. 2251 is approved."

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## CHAPTER 121

[House Bill 2296]

### MUNICIPAL PETITIONS—DUPLICATE SIGNATURES

AN ACT Relating to duplicate signatures on petitions in cities, towns, and code cities; amending RCW 35.21.005 and 35A.01.040; 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 in *Filo Foods, LLC v. City of SeaTac*, No. 70758-2-I (Wash. Ct. Apps. Div. I, Feb. 10, 2014), the Washington court of appeals ruled that RCW 35A.01.040(7), requiring local certifying officers to strike all signatures of any person signing an optional municipal code city initiative petition two or more times, was unconstitutional. The court held that the statute unduly burdened the first amendment rights of voters who expressed a view on a political matter by signing an initiative petition.

(2) The legislature intends to require local officers certifying city and town petitions to count one valid signature of a duplicate signer. This will ensure that a person inadvertently signing a city or town petition more than once will not be penalized for doing so.

**Sec. 2.** RCW 35.21.005 and 2008 c 196 s 1 are each amended to read as follows:

Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

#### WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) ~~((Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.))~~ If a person signs a petition more than once, all but the first valid signature must be rejected.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed.

**Sec. 3.** RCW 35A.01.040 and 2008 c 196 s 2 are each amended to read as follows:

Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

#### WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) ~~((Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.))~~ If a person signs a petition more than once, all but the first valid signature must be rejected.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed.

Passed by the House March 10, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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## CHAPTER 122

[Engrossed House Bill 2335]

### FOSTER CARE—EXTENDED SERVICES

AN ACT Relating to extended foster care services; amending RCW 13.34.267; reenacting and amending RCW 74.13.031; and providing an effective date.

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

**Sec. 1.** RCW 13.34.267 and 2013 c 332 s 4 are each amended to read as follows:

(1) In order to facilitate the delivery of extended foster care services, the court, upon the agreement of the youth to participate in the extended foster care program, shall maintain the dependency proceeding for any youth who is dependent in foster care at the age of eighteen years and who, at the time of his or her eighteenth birthday, is:

(a) Enrolled in a secondary education program or a secondary education equivalency program;

(b) Enrolled and participating in a postsecondary academic or postsecondary vocational program, or has applied for and can demonstrate that he or she intends to timely enroll in a postsecondary academic or postsecondary vocational program; ~~((or))~~

(c) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(d) Within amounts appropriated specifically for this purpose, engaged in employment for eighty hours or more per month.

(2) If the court maintains the dependency proceeding of a youth pursuant to subsection (1) of this section, the youth is eligible to receive extended foster care services pursuant to RCW 74.13.031, subject to the youth's continuing eligibility and agreement to participate.

(3) A dependent youth receiving extended foster care services is a party to the dependency proceeding. The youth's parent or guardian must be dismissed from the dependency proceeding when the youth reaches the age of eighteen.

(4) The court shall dismiss the dependency proceeding for any youth who is a dependent in foster care and who, at the age of eighteen years, does not meet any of the criteria described in subsection (1)(a) through ~~((c))~~ (d) of this section or does not agree to participate in the program.

(5) The court shall order a youth participating in extended foster care services to be under the placement and care authority of the department, subject to the youth's continuing agreement to participate in extended foster care services. The department may establish foster care rates appropriate to the needs of the youth participating in extended foster care services. The department's placement and care authority over a youth receiving extended foster care services is solely for the purpose of providing services and does not create a legal responsibility for the actions of the youth receiving extended foster care services.

(6) The court shall appoint counsel to represent a youth, as defined in RCW 13.34.030(2)(b), in dependency proceedings under this section.

(7) The case plan for and delivery of services to a youth receiving extended foster care services is subject to the review requirements set forth in RCW 13.34.138 and 13.34.145, and should be applied in a developmentally appropriate manner, as they relate to youth age eighteen to twenty-one years. Additionally, the court shall consider:

(a) Whether the youth is safe in his or her placement;

(b) Whether the youth continues to be eligible for extended foster care services;

(c) Whether the current placement is developmentally appropriate for the youth;

(d) The youth's development of independent living skills; and  
(e) The youth's overall progress toward transitioning to full independence and the projected date for achieving such transition.

(8) Prior to the review hearing, the youth's attorney shall indicate whether there are any contested issues and may provide additional information necessary for the court's review.

**Sec. 2.** RCW 74.13.031 and 2013 c 332 s 10 and 2013 c 32 s 2 are each reenacted and amended to read as follows:

(1) The department and supervising agencies shall 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, the department and supervising agencies shall 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 the department shall annually report to the governor and the legislature concerning the department's and supervising agency'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) The department shall 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. 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) As provided in RCW 26.44.030(11), the department may respond to a report of child abuse or neglect by using the family assessment response.

(5) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(6) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies 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. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive

years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(7) The department and supervising agencies shall 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, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, 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.

(8) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(9) The department and supervising agency shall have authority to purchase care for children.

(10) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies 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.

(11)(a) The department and supervising agencies shall provide continued extended foster care services to nonminor dependents who are:

(i) Enrolled in a secondary education program or a secondary education equivalency program;

(ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program; ~~((or))~~

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(iv) Within amounts appropriated specifically for this purpose, engaged in employment for eighty hours or more per month.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent and in foster care at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW 13.34.267, he or she may receive extended foster care services pursuant to a voluntary placement agreement under RCW 74.13.336 or pursuant to an order of dependency issued by the court under RCW 13.34.268. A nonminor dependent whose dependency case was dismissed by the court must have requested extended foster care services before reaching age nineteen years.



(c) The department shall develop and implement rules regarding youth eligibility requirements.

(12) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (11) of this section.

(13) The department shall 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. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(14) The department and supervising agencies shall 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. The purchase of such care is exempt from the requirements of chapter 74.13B RCW and may be purchased from the federally recognized Indian tribe or tribally licensed child-placing agency, and 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 under subsections (4), (7), and (8) 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.

(15) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(17) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department

has to a child subject to a dependency petition including, but not limited to, the following:

- (i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;
  - (ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);
  - (iii) Parent-child visits;
  - (iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and
  - (v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.
- (b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

**NEW SECTION. Sec. 3.** This act takes effect March 1, 2015.

Passed by the House March 13, 2014.

Passed by the Senate March 13, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 123

[Substitute House Bill 2433]

### CITY AND TOWNS—ANNEXATION NOTIFICATION—UTILITIES

AN ACT Relating to notification by a city or town to light and power businesses and gas distribution businesses of annexed areas and affected properties; and amending RCW 35.13.270 and 35A.14.801.

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

**Sec. 1.** RCW 35.13.270 and 2007 c 285 s 1 are each amended to read as follows:

(1) Whenever any territory is annexed to a city or town which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the county treasurer be paid to the city or town and by the city or town placed in the city or town street fund; except that road district taxes that are delinquent before the date of annexation shall be paid to the county and placed in the county road fund.

(2) When territory that is part of a fire district is annexed to a city or town, the following apply:

(a) Fire district taxes on annexed property that were levied, but not collected, and were not delinquent at the time of the annexation shall, when collected, be paid to the annexing city or town at times required by the county, but no less frequently than by July 10th for collections through June 30th and January 10th for collections through December 31st following the annexation; and

(b) Fire district taxes on annexed property that were levied, but not collected, and were delinquent at the time of the annexation and the pro rata share of the current year levy budgeted for general obligation debt, when collected, shall be paid to the fire district.

(3) When territory that is part of a library district is annexed to a city or town, the following apply:

(a) Library district taxes on annexed property that were levied, but not collected, and were not delinquent at the time of the annexation shall, when collected, be paid to the annexing city or town at times required by the county, but no less frequently than by July 10th for collections through June 30th and January 10th for collections through December 31st following the annexation; and

(b) Library district taxes on annexed property that were levied, but not collected, and were delinquent at the time of the annexation and the pro rata share of the current year levy budgeted for general obligation debt, when collected, shall be paid to the library district.

(4) Subsections (1) through (3) of this section do not apply to any special assessments due in behalf of such property.

(5) If a city or town annexes property within a fire district or library district while any general obligation bond secured by the taxing authority of the district is outstanding, the bonded indebtedness of the fire district or library district remains an obligation of the taxable property annexed as if the annexation had not occurred.

(6) For each annexation by a city or town, the city or town ((is required to)) must provide notification, by certified mail or electronic means, that includes a list of annexed parcel numbers(;) and the street address to the county treasurer and assessor, to the light and power businesses and gas distribution businesses, and to the fire district and library district, as appropriate, at least ((thirty)) sixty days before the effective date of the annexation. The county treasurer is only required to remit to the city or town those road taxes, fire district taxes, and library district taxes collected ((thirty)) sixty days or more after receipt of the notification. The light and power businesses and gas distribution businesses are only required to remit to the city or town those utility taxes collected sixty days or more after receipt of the notification.

(7)(a) In counties that do not have a boundary review board, the city or town shall provide notification to the fire district or library district of the jurisdiction's resolution approving the annexation. The notification required under this subsection must:

(i) Be made by certified mail within seven days of the resolution approving the annexation; and

(ii) Include a description of the annexed area.

(b) In counties that have a boundary review board, the city or town shall provide notification of the proposed annexation to the fire district or library district simultaneously when notice of the proposed annexation is provided by the jurisdiction to the boundary review board under RCW 36.93.090.

(8) The provisions of this section regarding (a) the transfer of fire and library district property taxes and (b) city and town notifications to fire and library districts do not apply if the city or town has been annexed to and is within the fire or library district when the city or town approves a resolution to annex unincorporated county territory.

(9) An error or accidental omission by a city or town in the transmitted annexation notice required under this section may be corrected by the city or town by providing an amended notice to the county treasurer and assessor, the

light and power businesses, the gas distribution businesses, and to the fire district and library district, as appropriate. The recipient of the amended notice is only required to remit applicable taxes to the city or town, in accordance with the corrected information, sixty days after its receipt of the amended notice.

(10) For purposes of this section, "electronic means" means an electronic format agreed to by both sender and recipient that conveys all applicable notification information.

**Sec. 2.** RCW 35A.14.801 and 2007 c 285 s 2 are each amended to read as follows:

(1) Whenever any territory is annexed to a code city which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the county treasurer be paid to the code city and by the city placed in the city street fund; except that road district taxes that are delinquent before the date of annexation shall be paid to the county and placed in the county road fund.

(2) When territory that is part of a fire district is annexed to a code city, the following apply:

(a) Fire district taxes on annexed property that were levied, but not collected, and were not delinquent at the time of the annexation shall, when collected, be paid to the annexing code city at times required by the county, but no less frequently than by July 10th for collections through June 30th and January 10th for collections through December 31st following the annexation; and

(b) Fire district taxes on annexed property that were levied, but not collected, and were delinquent at the time of the annexation and the pro rata share of the current year levy budgeted for general obligation debt, when collected, shall be paid to the fire district.

(3) When territory that is part of a library district is annexed to a code city, the following apply:

(a) Library district taxes on annexed property that were levied, but not collected, and were not delinquent at the time of the annexation shall, when collected, be paid to the annexing code city at times required by the county, but no less frequently than by July 10th for collections through June 30th and January 10th for collections through December 31st following the annexation; and

(b) Library district taxes on annexed property that were levied, but not collected, and were delinquent at the time of the annexation and the pro rata share of the current year levy budgeted for general obligation debt, when collected, shall be paid to the library district.

(4) Subsections (1) through (3) of this section do not apply to any special assessments due in behalf of such property.

(5) If a code city annexes property within a fire district or library district while any general obligation bond secured by the taxing authority of the district is outstanding, the bonded indebtedness of the fire district or library district remains an obligation of the taxable property annexed as if the annexation had not occurred.

(6) For each annexation by a code city, the code city (~~is required to~~) must provide notification, by certified mail or electronic means, that includes a list of annexed parcel numbers(;) and the street address to the county treasurer and

assessor, to the light and power businesses and gas distribution businesses, and to the fire district and library district, as appropriate, at least ~~((thirty))~~ sixty days before the effective date of the annexation. The county treasurer is only required to remit to the code city those road taxes, fire district taxes, and library district taxes collected ~~((thirty))~~ sixty or more days after receipt of the notification. The light and power businesses and gas distribution businesses are only required to remit to the city or town those utility taxes collected sixty days or more after receipt of the notification.

(7)(a) In counties that do not have a boundary review board, the code city shall provide notification to the fire district or library district of the jurisdiction's resolution approving the annexation. The notification required under this subsection must:

(i) Be made by certified mail within seven days of the resolution approving the annexation; and

(ii) Include a description of the annexed area.

(b) In counties that have a boundary review board, the code city shall provide notification of the proposed annexation to the fire district or library district simultaneously when notice of the proposed annexation is provided by the jurisdiction to the boundary review board under RCW 36.93.090.

(8) The provisions of this section regarding (a) the transfer of fire and library district property taxes and (b) code city notifications to fire and library districts do not apply if the code city has been annexed to and is within the fire or library district when the code city approves a resolution to annex unincorporated county territory.

(9) An error or accidental omission by a code city in the transmitted annexation notice required under this section may be corrected by the city by providing an amended notice to the county treasurer and assessor, the light and power businesses, the gas distribution businesses, and to the fire district and library district, as appropriate. The recipient of the amended notice is only required to remit applicable taxes to the city, in accordance with the corrected information, sixty days after its receipt of the amended notice.

(10) For purposes of this section, "electronic means" means an electronic format agreed to by both sender and recipient that conveys all applicable notification information.

Passed by the House February 12, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 124

[Engrossed Substitute House Bill 2463]

### PERSONS WITH DISABILITIES—PARKING

AN ACT Relating to special parking privileges for persons with disabilities; amending RCW 46.19.010, 46.19.020, 46.19.030, 46.19.040, 46.19.050, 46.61.582, 46.61.583, and 46.63.020; 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.** (1) The legislature finds that there is a history of abuse of special parking privileges for persons with disabilities that requires changes to maintain public safety and good order.

(2) It is the intent of the legislature to: (a) Decrease the amount of unlawful use of special parking privileges for persons with disabilities; (b) not create additional burdens for those in need of special parking privileges for persons with disabilities; (c) provide local jurisdictions with the authority to improve their administration of on-street parking; (d) encourage the department of licensing to implement the recommendations of the disabled parking work group in regards to placard and application changes; and (e) encourage the department of licensing to consider parking information system upgrades related to special parking privileges for persons with disabilities in its pursuit of technology modernization.

**Sec. 2.** RCW 46.19.010 and 2011 c 96 s 32 are each amended to read as follows:

(1) A natural person who has a disability that meets one of the following criteria may apply for special parking privileges:

- (a) Cannot walk two hundred feet without stopping to rest;
- (b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;
- (c) Has such a severe disability that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) Uses portable oxygen;
- (e) Is restricted by lung disease to an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association;
- (g) Has a disability resulting from an acute sensitivity to automobile emissions that limits or impairs the ability to walk. The personal physician, advanced registered nurse practitioner, or physician assistant of the applicant shall document that the disability is comparable in severity to the others listed in this subsection;

(h) Has limited mobility and has no vision or whose vision with corrective lenses is so limited that the person requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by persons with normal vision;

(i) Has an eye condition of a progressive nature that may lead to blindness;

or  
(j) Is restricted by a form of porphyria to the extent that the applicant would significantly benefit from a decrease in exposure to light.

(2) The disability must be determined by either:

- (a) A licensed physician;
- (b) An advanced registered nurse practitioner licensed under chapter 18.79 RCW; or
- (c) A physician assistant licensed under chapter 18.71A or 18.57A RCW.

(3) A health care practitioner listed under subsection (2) of this section must provide a signed written authorization on tamper-resistant prescription pad or paper, as defined in RCW 18.64.500, if the practitioner has prescriptive authority. An authorized health care practitioner without prescriptive authority must provide the signed written authorization on his or her office letterhead. Such authorizations must be attached to the application for special parking privileges for persons with disabilities.

(4) The application for special parking privileges for persons with disabilities must contain:

(a) The following statement immediately below the physician's, advanced registered nurse practitioner's, or physician assistant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility or involves acute sensitivity to light (RCW 46.19.010). ~~((Knowingly providing false information on this application is a gross misdemeanor.))~~ An applicant or health care practitioner who knowingly provides false information on this application is guilty of a gross misdemeanor. The penalty is up to three hundred sixty-four days in jail and a fine of up to \$5,000 or both. In addition, the health care practitioner may be subject to sanctions under chapter 18.130 RCW, the Uniform Disciplinary Act"; and

(b) Other information as required by the department.

~~((4))~~ (5) A natural person who has a disability described in subsection (1) of this section and is expected to improve within ~~((six))~~ twelve months may be issued a temporary placard for a period not to exceed ~~((six))~~ twelve months. If the disability exists after ~~((six))~~ twelve months, a new temporary placard must be issued upon receipt of a new application with certification from the person's physician as prescribed in subsections (3) and (4) of this section. Special license plates for persons with disabilities may not be issued to a person with a temporary disability.

~~((5))~~ (6) A natural person who qualifies for special parking privileges under this section must receive an identification card showing the name and date of birth of the person to whom the parking privilege has been issued and the serial number of the placard.

~~((6))~~ (7) A natural person who qualifies for permanent special parking privileges under this section may receive one of the following:

(a) Up to two parking placards;

(b) One set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed;

(c) One parking placard and one set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed; or

(d) One special parking year tab for persons with disabilities and one parking placard.

~~((7))~~ (8) Parking placards and identification cards described in this section must be issued free of charge.

~~((8))~~ (9) The parking placard and identification card must be immediately returned to the department upon the placard holder's death.

**Sec. 3.** RCW 46.19.020 and 2012 c 10 s 42 are each amended to read as follows:

(1) The following organizations may apply for special parking privileges:

- (a) Public transportation authorities;
- (b) Nursing homes licensed under chapter 18.51 RCW;
- (c) Assisted living facilities licensed under chapter 18.20 RCW;
- (d) Senior citizen centers;
- (e) Accessible van rental companies registered under RCW 46.87.023;
- (f) Private nonprofit corporations, as defined in RCW 24.03.005; and
- ~~((f))~~ (g) Cabulance companies that regularly transport persons with disabilities who have been determined eligible for special parking privileges under this section and who are registered with the department under chapter 46.72 RCW.

(2) An organization that qualifies for special parking privileges may receive, upon application, ~~((parking))~~ special license plates or parking placards, or both, for persons with disabilities as defined by the department.

(3) Public transportation authorities, nursing homes, assisted living facilities, senior citizen centers, accessible van rental companies, private nonprofit corporations, and cabulance services are responsible for ensuring that the ~~((special))~~ parking placards and special license plates are not used improperly and are responsible for all fines and penalties for improper use.

(4) The department shall adopt rules to determine organization eligibility.

**Sec. 4.** RCW 46.19.030 and 2010 c 161 s 704 are each amended to read as follows:

(1) The department shall design special license plates for persons with disabilities, parking placards, and year tabs displaying the international symbol of access.

(2) Special license plates for persons with disabilities must be displayed on the motor vehicle as standard issue license plates as described in RCW 46.16A.200.

(3) Parking placards must include both a serial number and the expiration date on the face of the placard. The expiration date and serial number must be of a sufficient size as to be easily visible from a distance of ten feet from where the placard is displayed.

(4) Parking placards must be displayed when the motor vehicle is parked by suspending it from the rearview mirror. In the absence of a rearview mirror, the parking placard must be displayed on the dashboard. The parking placard must be displayed in a manner that allows for the entire placard to be viewed through the vehicle windshield.

~~((4))~~ (5) Special year tabs for persons with disabilities must be displayed on license plates as defined by the department.

~~((5))~~ (6) Persons who have been issued special license plates for persons with disabilities, parking placards, or special license plates with a special year tab for persons with disabilities may park in places reserved for persons with physical disabilities.

**Sec. 5.** RCW 46.19.040 and 2010 c 161 s 703 are each amended to read as follows:

(1) Parking privileges for persons with disabilities must be renewed at least every five years, as required by the director, by satisfactory proof of the right to



continued use of the privileges. Satisfactory proof must include a signed written authorization from a health care practitioner as required in RCW 46.19.010(3).

(2) The department shall match and purge its database of parking permits issued to persons with disabilities with available death record information at least every twelve months.

(3) The department shall adopt rules to administer the parking privileges for persons with disabilities program.

**Sec. 6.** RCW 46.19.050 and 2011 c 171 s 74 are each amended to read as follows:

(1) **False information.** Knowingly providing false information in conjunction with the application for special parking privileges for persons with disabilities is a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) **Unauthorized use.** Any unauthorized use of the ~~((special))~~ parking placard, special license ~~((plate))~~ plate, special year tab, or identification card issued under this chapter is a parking infraction with a monetary penalty of two hundred fifty dollars. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed. For the purpose of this subsection, "unauthorized use" includes (a) any use of a parking placard, special license plate, special year tab, or identification card that is expired, inactivated, faked, forged, or counterfeited, (b) any use of a parking placard, special license plate, special year tab, or identification card of another holder if the initial holder is no longer eligible to use or receive it, and (c) any use of a parking placard, special license plate, special year tab, or identification card of another holder even if permitted to do so by the holder.

(3) **Inaccessible access.** It is a parking infraction, with a monetary penalty of two hundred fifty dollars, for a person to stop, stand, or park in, block, or otherwise make inaccessible the access aisle located next to a space reserved for persons with physical disabilities. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed. The clerk of the court shall report all violations related to this subsection to the department.

(4) **Parking without placard/plate.** It is a parking infraction, with a monetary penalty of two hundred fifty dollars, for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for persons with physical disabilities without a placard or special license plate issued under this chapter. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed. If a person is charged with a violation, the person will not be determined to have committed an infraction if the person ~~((produces in court or before the court appearance the placard or special license plate))~~ establishes that the person operating the vehicle or being transported at the time of the infraction had a valid placard, special license plate, or special year tab issued under this chapter as required under this chapter. ~~((A local jurisdiction providing nonmetered, on-street parking places reserved for persons with physical disabilities may impose by ordinance time restrictions of no less than four hours on the use of these parking places.))~~ Such person must sign a statement under penalty of perjury that the placard, special license plate, or special year tab produced prior to the court appearance was valid at the time of infraction and issued under this chapter as required under this chapter.

(5) **Time restrictions.** A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards or special license plates issued under this chapter. All time restrictions must be clearly posted.

(6) **Improper display of placard/plate.** It is a parking infraction, with a monetary penalty of two hundred fifty dollars, to fail to fully display a placard or special license plate issued under this chapter while parked in a public place on private property without charge, while parked on public property reserved for persons with physical disabilities, or while parking free of charge as allowed under RCW 46.61.582. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed, for a total of four hundred fifty dollars. For the purpose of this subsection, "fully display" means hanging or placing the placard or special license plate so that the full face of the placard or license plate is visible, including the serial number and expiration date of the license plate or placard. If a person is charged with a violation of this subsection, that person will not be determined to have committed an infraction if the person produces in court or before the court appearance a valid identification card issued to that person under RCW 46.19.010.

~~((6))~~ (7) **Allocation and use of funds - reimbursement.** (a) The assessment imposed under subsections (2), (3), ~~((and))~~ (4), and (6) of this section must be allocated as follows:

(i) One hundred dollars must be deposited in the accessible communities account created in RCW 50.40.071; and

(ii) One hundred dollars must be deposited in the multimodal transportation account under RCW 47.66.070 for the sole purpose of supplementing a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation that is administered by the department of transportation.

(b) Any reduction in any penalty or fine and assessment imposed under subsections (2), (3), ~~((and))~~ (4), and (6) of this section must be applied proportionally between the penalty or fine and the assessment. When a reduced penalty is imposed under subsection (2), (3), ~~((or))~~ (4), or (6) of this section, the amount deposited in the accounts identified in (a) of this subsection must be reduced equally and proportionally.

(c) The penalty or fine amounts must be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs that it may have incurred in the removal and storage of the improperly parked vehicle.

~~((7))~~ (8) **Illegal obtainment.** Except as provided in subsection (1) of this section, it is a ~~((traffic infraction with a monetary penalty of two hundred fifty dollars))~~ misdemeanor punishable under chapter 9A.20 RCW for any person willfully to obtain a special license plate, placard, special year tab, or identification card issued under this chapter in a manner other than that established under this chapter.

~~((8))~~ (9) **Sale of a placard/plate/tab/card.** It is a misdemeanor punishable under chapter 9A.20 RCW for any person to sell a placard, special license plate, special year tab, or identification card issued under this chapter.

**(10) Volunteer appointment.** A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of subsections (2), (3), (4), and (6) of this section or RCW ((46.19.010 and) 46.19.030 or 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications that the agency deems desirable.

(a) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(b) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a ~~((police))~~ peace officer for the same offense.

(c) A ~~((police))~~ peace officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

~~((49))~~ **(11) Surrender of a placard/plate/tab/card.** If a person is found to have violated the special parking privileges provided in this chapter, and unless an appeal of that finding is pending, a judge may order that the person surrender his or her placard, special license plate, special year tab, or identification card issued under this chapter.

**(12) Community restitution.** For second or subsequent violations of this section, in addition to a monetary penalty, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves persons with disabilities or disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons with disabilities.

~~((40))~~ **(13) Fine suspension.** The court may not suspend more than one-half of any fine imposed under subsection (2), (3), (4), or ~~((7))~~ (6) of this section.

**Sec. 7.** RCW 46.61.582 and 2011 c 171 s 80 are each amended to read as follows:

(1) Any person who meets the criteria for special parking privileges under RCW 46.19.010 ((shall)) must be allowed free of charge to park a vehicle being used to transport ((that person)) the holder of such special parking privileges for unlimited periods of time in parking zones or areas, including zones or areas with parking meters ((which)) that are otherwise restricted as to the length of time parking is permitted, except zones in which parking is limited pursuant to RCW 46.19.050(5). ((This section does not apply to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles.)) The person ((shall)) must obtain and display a ((special)) parking placard or special license plate under RCW 46.19.010 and 46.19.030 to be eligible for the privileges under this section.

(2) This section does not apply to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or that are reserved for special types of vehicles.

**Sec. 8.** RCW 46.61.583 and 1991 c 339 s 26 are each amended to read as follows:

A special license plate or card issued by another state or country that indicates an occupant of the vehicle (~~((is disabled,))~~) has a disability entitles the vehicle on or in which it is displayed and being used to transport the (~~((disabled))~~) person with disabilities to the same (~~((overtime))~~) parking privileges granted under this chapter to a vehicle with a similar special license plate or card issued by this state.

**Sec. 9.** RCW 46.63.020 and 2013 2nd sp.s. c 23 s 21 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 46.09.457(1)(b)(i) relating to a false statement regarding the inspection of and installation of equipment on wheeled all-terrain vehicles;

(2) RCW 46.09.470(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(3) RCW 46.09.480 relating to operation of nonhighway vehicles;

(4) RCW 46.10.490(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;

(5) RCW 46.10.495 relating to the operation of snowmobiles;

(6) Chapter 46.12 RCW relating to certificates of title, registration certificates, and markings indicating that a vehicle has been destroyed or declared a total loss;

(7) RCW 46.16A.030 and 46.16A.050(3) relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

(8) RCW 46.16A.520 relating to permitting unauthorized persons to drive;

(9) RCW 46.16A.320 relating to vehicle trip permits;

(10) RCW 46.19.050(1) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(11) RCW 46.19.050(8) relating to illegally obtaining a parking placard, special license plate, special year tab, or identification card;

(12) RCW 46.19.050(9) relating to sale of a parking placard, special license plate, special year tab, or identification card;

(13) RCW 46.20.005 relating to driving without a valid driver's license;

~~((12))~~ (14) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

~~((13))~~ (15) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

~~((14))~~ (16) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

~~((15))~~ (17) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

~~((16))~~ (18) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license, temporary restricted driver's license, or ignition interlock driver's license;

~~((17))~~ (19) 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;

~~((18))~~ (20) RCW 46.20.750 relating to circumventing an ignition interlock device;

~~((19))~~ (21) RCW 46.25.170 relating to commercial driver's licenses;

~~((20))~~ (22) Chapter 46.29 RCW relating to financial responsibility;

~~((21))~~ (23) RCW 46.30.040 relating to providing false evidence of financial responsibility;

~~((22))~~ (24) RCW 46.35.030 relating to recording device information;

~~((23))~~ (25) RCW 46.37.435 relating to wrongful installation of sunscreening material;

~~((24))~~ (26) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

~~((25))~~ (27) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

~~((26))~~ (28) RCW 46.37.685 relating to switching or flipping license plates, utilizing technology to flip or change the appearance of a license plate, selling a license plate flipping device or technology used to change the appearance of a license plate, or falsifying a vehicle registration;

~~((27))~~ (29) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

~~((28))~~ (30) RCW 46.48.175 relating to the transportation of dangerous articles;

~~((29))~~ (31) RCW 46.52.010 relating to duty on striking an unattended car or other property;

~~((30))~~ (32) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

~~((31))~~ (33) RCW 46.52.090 relating to reports by repairers, storage persons, and appraisers;

~~((32))~~ (34) 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;

~~((33))~~ (35) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

~~((34))~~ (36) RCW 46.55.035 relating to prohibited practices by tow truck operators;

~~((35))~~ (37) RCW 46.55.300 relating to vehicle immobilization;

~~((36))~~ (38) RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;

~~((37))~~ (39) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

~~((38))~~ (40) RCW 46.61.022 relating to failure to stop and give identification to an officer;

~~((39))~~ (41) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

~~((40))~~ (42) RCW 46.61.212(4) relating to reckless endangerment of emergency zone workers;

~~((41))~~ (43) RCW 46.61.500 relating to reckless driving;

~~((42))~~ (44) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

~~((43))~~ (45) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

~~((44))~~ (46) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

~~((45))~~ (47) RCW 46.61.522 relating to vehicular assault;

~~((46))~~ (48) RCW 46.61.5249 relating to first degree negligent driving;

~~((47))~~ (49) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

~~((48))~~ (50) RCW 46.61.530 relating to racing of vehicles on highways;

~~((49))~~ (51) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;

~~((50))~~ (52) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

~~((51))~~ (53) RCW 46.61.740 relating to theft of motor vehicle fuel;

~~((52))~~ (54) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

~~((53))~~ (55) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

~~((54))~~ (56) Chapter 46.65 RCW relating to habitual traffic offenders;

~~((55))~~ (57) RCW 46.68.010 relating to false statements made to obtain a refund;

~~((56))~~ (58) 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;

~~((57))~~ (59) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

~~((58))~~ (60) RCW 46.72A.060 relating to limousine carrier insurance;

~~((59))~~ (61) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

~~((60))~~ (62) RCW 46.72A.080 relating to false advertising by a limousine carrier;

~~((61))~~ (63) Chapter 46.80 RCW relating to motor vehicle wreckers;

~~((62))~~ (64) Chapter 46.82 RCW relating to driver's training schools;

~~((63))~~ (65) 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;

~~((64))~~ (66) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

**NEW SECTION. Sec. 10.** This act takes effect July 1, 2015.

Passed by the House March 10, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.  
 Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 125

[Engrossed Second Substitute House Bill 2493]

### PROPERTY TAXES—CURRENT USE VALUATIONS—COMMERCIAL HORTICULTURAL LANDS

AN ACT Relating to current use valuation for land primarily used for commercial horticultural purposes; amending RCW 84.34.020; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature intends to clarify and update the description of farm and agricultural land as it is used under the property tax open space program. Modern technology and water quality and labor regulations have all caused nurseries to increasingly grow plants in containers rather than in the ground. Growing plants in containers preserves topsoil, allows more plants to be grown per acre, allows soil and nutrients to be customized for each type of plant, allows more efficient use of water and fertilizer, allows year round harvest and sales, and reduces labor cost and injuries.

**Sec. 2.** RCW 84.34.020 and 2011 c 101 s 1 are each amended to read as follows:

~~((As used in this chapter, unless a different meaning is required by the context.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Parcels of land described in (b)(i)(A) and (c)(i) of this subsection will, upon any transfer of the property excluding a transfer to a surviving spouse or surviving state registered domestic partner, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which meet one of the following criteria:

(i) Has produced a gross income from agricultural uses equivalent to two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) Has standing crops with an expectation of harvest within seven years, except as provided in (d)(iii) of this subsection, and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year. For the purposes of this subsection (2)(d)(ii), "standing crop" means Christmas trees, vineyards, fruit trees, or other perennial crops that: (A) Are planted using agricultural methods normally used in the commercial production of that particular crop; and (B) typically do not produce harvestable quantities in the initial years after planting; or

(iii) Has a standing crop of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year;

(e) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the



agricultural products exist in conjunction with the lands producing such products. Agricultural lands also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands";

(f) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes; (~~or~~)

(g) Any land that is used primarily for equestrian related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meet the requirements of (a), (b), or (c) of this subsection; or

(h) Any land primarily used for commercial horticultural purposes, including growing seedlings, trees, shrubs, vines, fruits, vegetables, flowers, herbs, and other plants in containers, whether under a structure or not, subject to the following:

(i) The land is not primarily used for the storage, care, or selling of plants purchased from other growers for retail sale;

(ii) If the land is less than five acres and used primarily to grow plants in containers, such land does not qualify as "farm and agricultural land" if more than twenty-five percent of the land used primarily to grow plants in containers is open to the general public for on-site retail sales;

(iii) If more than twenty percent of the land used for growing plants in containers qualifying under this subsection (2)(h) is covered by pavement, none of the paved area is eligible for classification as "farm and agricultural land" under this subsection (2)(h). The eligibility limitations described in this subsection (2)(h)(iii) do not affect the land's eligibility to qualify under (e) of this subsection; and

(iv) If the land classified under this subsection (2)(h), in addition to any contiguous land classified under this subsection, is less than twenty acres, it must meet the applicable income or investment requirements in (b), (c), or (d) of this subsection.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber 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.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" means the contract vendee.

(6)(a) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, is considered contiguous.

(b) For purposes of this subsection (6):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or  
(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in (b)(ii)(C) of this subsection (6).

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

**NEW SECTION. Sec. 3.** The amendments to RCW 84.34.020, as provided in section 2 of this act, are intended to clarify an ambiguity in an existing tax preference, and are therefore exempt from the requirements of RCW 82.32.805 and 82.32.808.

Passed by the House March 11, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 126

[Engrossed House Bill 2351]

## HEALTH CARE PROFESSIONALS—OUT-OF-STATE VOLUNTEERS

AN ACT Relating to volunteer health care professionals licensed in a foreign jurisdiction; and adding a new section to chapter 43.70 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.70 RCW to read as follows:

(1) Persons licensed as health care professionals in another state or territory of the United States or the District of Columbia, but not licensed by a disciplining authority specified in RCW 18.130.040, may practice in this state on a limited voluntary basis only as provided in this section.

(2) The volunteer health care professional's license must be for a profession substantially equivalent to a profession regulated by a disciplining authority listed in RCW 18.130.040.

(3) At least ten working days prior to the first day of volunteer practice, the volunteer health care professional must submit to the department an attestation that includes, but is not limited to, the following:

(a) A confirmation that the health care professional holds an active license to practice in any state or territory of the United States or the District of Columbia;

(b) A confirmation that the health care professional is not presently subject to any disciplinary action or investigation for criminal or professional misconduct in any jurisdiction;

(c) An acknowledgment that the health care professional understands he or she may perform only within the relevant professional scope of practice permitted under Washington law, or state of licensure, whichever is more restrictive;

(d) A confirmation that the health care professional has not volunteered in Washington for more than thirty days in the current calendar year;

(e) The contact information of the organization sponsoring the medical clinic or health care event, if any; and

(f) Anticipated volunteer practice dates.

(4) The attestation must be made on a form established by the secretary.

(5) Neither the volunteer health care professional nor the organization sponsoring a medical clinic or health care event, if any, may charge for any time or services performed in Washington. However, organizations sponsoring a medical clinic or health care event may pay or reimburse the volunteer health care professional for actual incurred travel costs.

(6) No health care professional permitted to practice in Washington under this section may volunteer more than thirty days in any calendar year.

(7) Any organization sponsoring a medical clinic or health care event using the services of any volunteer health care professional permitted to practice under this section must:

(a) Independently verify each requirement in subsection (3) of this section for each volunteer health care professional and retain proof of verification for two years after the last day of the medical clinic or health care event;

(b) Maintain the health care records of all patients evaluated or treated by a volunteer health care professional in compliance with chapter 70.02 RCW; and

(c) Ensure the health care records of all patients evaluated or treated by a volunteer health care professional are accessible to future health care professionals, if needed, in compliance with chapter 70.02 RCW.

(8) This section does not create any civil liability on the part of the state or any state agency, officer, employee, or agent.

(9) This section does not apply to the practice of health care professionals under chapter 38.10 or 38.52 RCW or under an agreement authorized by the United States congress for emergency management assistance.

Passed by the House February 13, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 127

[Engrossed Second Substitute House Bill 2580]

### TASK FORCE—ECONOMIC RESILIENCE OF MARITIME AND MANUFACTURING IN WASHINGTON

AN ACT Relating to fostering economic resilience and development in Washington by supporting the maritime industry and other manufacturing sectors; creating new sections; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** (1) The legislature recognizes the important role of the maritime industry and other manufacturing sectors in creating and sustaining economic opportunities in Washington. The maritime industry and other manufacturing sectors account for forty percent of the gross domestic product in Washington. In looking to the state's future, the legislature finds that supporting the maritime industry and other manufacturing sectors is critical to building and sustaining a diverse and resilient economy in Washington.

(2) The maritime industry and other manufacturing sectors are interconnected with the public infrastructure, including ports, roads, railways, energy facilities, and water-sewer facilities. The protection and expansion of public infrastructure, including through urban planning and disaster recovery planning, is crucial to the success of the maritime industry and other manufacturing sectors.

(3) To that end, the legislature intends to engage in a collaborative process with state agencies, local governments, and private sector leaders to evaluate whether changes in state and local policies are necessary to foster resilience and growth in the maritime industry and other manufacturing sectors. Through the establishment of the joint select legislative task force, the legislature intends to take action to support and sustain the maritime industry and other manufacturing sectors as the region continues to recover from the national financial crisis and progresses toward a future of increased economic opportunity for all citizens of the state.

**NEW SECTION. Sec. 2.** (1)(a) A joint select legislative task force on the economic resilience of maritime and manufacturing in Washington is established, with members as provided in this subsection.

(i) The speaker of the house of representatives must appoint three members from each of the two largest caucuses of the house of representatives.

(ii) The president of the senate must appoint three members from each of the two largest caucuses of the senate.

(iii) The governor must appoint one member to represent the department of commerce.

(b) The legislative members of the task force must select cochairs from among the membership, one from the house of representatives and one from the senate.

(2)(a) The task force must develop recommendations that achieve the following objectives:

(i) Identify the maritime and manufacturing sectors of economic significance to the state;

(ii) Identify and assess the critical public infrastructure that supports and sustains the maritime and manufacturing sectors;

(iii) Identify the barriers to maintaining and expanding the maritime and manufacturing sectors;

(iv) Identify and assess the educational resources and support services available to local governments with respect to supporting and sustaining the development of the maritime and manufacturing sectors;

(v) Promote regulatory consistency and certainty in the areas of urban planning, land use permitting, and business development in a manner that encourages the maritime and manufacturing industries in urban areas;

(vi) Encourage cooperation between the public and private sectors to foster economic growth;

(vii) Explore public-private sector collaborations that draw on Washington State University research centers and institutes with expertise on maritime interoperability and critical infrastructure resilience;

(viii) Identify aspects of state policy that have an impact on fostering resilience and growth in the maritime and manufacturing sectors, such as storm water policy and other food fish-related issues; and

(ix) Maximize the opportunities for employment in the maritime industry and other manufacturing sectors in Washington.

(b) The recommendations of the task force must include a short and long-term action plan for the legislature to support and sustain the maritime industry and other manufacturing sectors in Washington. The recommendations of the task force may also include specific legislative approaches, such as changes to state law, and nonlegislative approaches, such as action plans for state agencies and local governments.

(3)(a) The task force must consult with local governments and state agencies, which must include, but are not limited to: The department of commerce, the department of transportation, the office of regulatory assistance, the workforce training and education coordinating board, and associate development organizations.

(b) The legislative cochairs must appoint an advisory committee consisting of maritime and manufacturing business, labor, and other representatives to

provide technical information and assistance in completing the objectives of the task force. Membership on the advisory committee must include, but are not limited to representatives from: Marine terminal operators, manufacturing, maritime businesses, local industrial councils, local labor trades councils, and chambers of commerce.

(4) The task force must submit to the governor and the appropriate committees of the legislature a work plan by December 1, 2014, and a report with the task force's final findings and recommendations by November 1, 2015.

(5) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(6) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(8) This section expires June 1, 2016.

Passed by the House March 11, 2014.

Passed by the Senate March 4, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 128

[Second Substitute House Bill 2627]

### CHEMICAL DEPENDENCY—JUVENILE AND CRIMINAL JUSTICE SYSTEM

AN ACT Relating to the arrest of individuals who suffer from chemical dependency; amending RCW 13.40.042 and 13.40.080; adding a new section to chapter 10.31 RCW; 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 the large number of individuals involved in the juvenile justice and criminal justice systems with substance abuse challenges is of significant concern. Access to effective treatment is critical to the successful treatment of individuals in the early stages of their contact with the juvenile justice and criminal justice systems. Such access may prevent further involvement in the systems. The effective use of substance abuse treatment options can result not only in significant cost savings for the juvenile justice and criminal justice systems, but can benefit the lives of individuals who face substance abuse challenges.

**NEW SECTION. Sec. 2.** A new section is added to chapter 10.31 RCW to read as follows:

(1) A pilot program is established in Snohomish county for the purpose of studying the effect of chemical dependency diversions as described in this section.

(2) When a police officer has reasonable cause to believe that the individual:

(a) Has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 9.41.010;

(b) Has not committed a possible violation of laws relating to driving or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug under chapter 46.20 RCW; and

(c) Is known by history or consultation with staff designated by the county to suffer from a chemical dependency, as defined in RCW 70.96A.020, the arresting officer may:

(i) Take the individual to an approved chemical dependency treatment provider for treatment. The individual must be examined by a chemical dependency treatment provider within three hours of arrival;

(ii) Take the individual to an emergency medical service customarily used for incapacitated persons, if no approved treatment program is readily available. The individual must be examined by a chemical dependency treatment provider within three hours of arrival;

(iii) Refer the individual to a chemical dependency professional for initial detention and proceeding under chapter 70.96A RCW; or

(iv) Release the individual upon agreement to voluntary participation in outpatient treatment.

(3) If the individual is released to the community, the chemical dependency provider shall inform the arresting officer of the release within a reasonable period of time after the release if the arresting officer has specifically requested notification and provided contact information to the provider.

(4) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health and substance abuse history of the individual, where available, and the circumstances surrounding the commission of the alleged offense.

(5) The police officer shall submit a written report to the prosecuting attorney within ten days.

(6) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a chemical dependency treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(7) If an individual violates such agreement and the chemical dependency treatment alternative is no longer appropriate, the chemical dependency provider shall inform the referring law enforcement agency of the violation.

(8) Nothing in this section may be construed as barring the referral of charges to the prosecuting attorney, or the filing of criminal charges by the prosecuting attorney.

(9) The police officer, staff designated by the county, or treatment facility personnel are immune from liability for any good faith conduct under this section.

**NEW SECTION. Sec. 3.** Snohomish county shall evaluate the effects of the pilot program as provided in section 2 of this act. Snohomish county shall submit a report to the legislature consistent with RCW 43.01.036. The report

must summarize the effectiveness of the pilot program and include: How often the chemical dependency diversion was used, the kind of treatment the person engaged in, how often treatment was completed, the number of prosecutions, any cost savings to the county or state, any cost shifting from the county or state onto other systems, and the recidivism rate of offenders involved in the pilot program. The report may include any recommendations to the legislature to improve the effectiveness of the pilot program. The report is due July 1, 2015, and every other year until July 1, 2019.

**Sec. 4.** RCW 13.40.042 and 2013 c 179 s 2 are each amended to read as follows:

(1) When a police officer has reasonable cause to believe that a juvenile has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092, and the officer believes that the juvenile suffers from a mental disorder, and the local prosecutor has entered into an agreement with law enforcement regarding the detention of juveniles who may have a mental disorder or may be suffering from chemical dependency, the arresting officer, instead of taking the juvenile to the local juvenile detention facility, may take the juvenile to:

(a) An evaluation and treatment facility as defined in RCW 71.34.020 if the juvenile suffers from a mental disorder and the facility has been identified as an alternative location by agreement of the prosecutor, law enforcement, and the mental health provider;

(b) A facility or program identified by agreement of the prosecutor and law enforcement; or

(c) A location already identified and in use by law enforcement for the purpose of ~~((mental))~~ a behavioral health diversion.

(2) For the purposes of this section, an "alternative location" means a facility or program that has the capacity to evaluate a youth and, if determined to be appropriate, develop a behavioral health intervention plan and initiate treatment.

(3) If a juvenile is taken to any location described in subsection (1)(a) or (b) of this section, the juvenile may be held for up to twelve hours and must be examined by a mental health or chemical dependency professional within three hours of arrival.

(4) The authority provided pursuant to this section is in addition to existing authority under RCW 10.31.110 and section 2 of this act.

**Sec. 5.** RCW 13.40.080 and 2013 c 179 s 4 are each 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. If an assessment identifies mental health or chemical dependency needs, a youth may access up to thirty hours of counseling. The counseling sessions may include services demonstrated to improve behavioral health and reduce recidivism. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, a physician, a counselor, a school, or a treatment provider, 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 thirty 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. To the extent possible, the court officer shall advise the victims of the juvenile offender of the diversion process, offer victim impact letter forms and restitution claim forms, and 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 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 a restorative justice program, 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 or a restorative justice program. 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.

**NEW SECTION. Sec. 6.** Sections 2 and 3 of this act expire July 31, 2019.

Passed by the House March 11, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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## CHAPTER 129

[House Bill 2708]

### QUALIFIED ALTERNATIVE ENERGY RESOURCES

AN ACT Relating to a qualified alternative energy resource; and amending RCW 19.29A.090.

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

**Sec. 1.** RCW 19.29A.090 and 2012 c 112 s 1 are each amended to read as follows:

(1) Beginning January 1, 2002, each electric utility must provide to its retail electricity customers a voluntary option to purchase qualified alternative energy resources in accordance with this section.

(2) Each electric utility must include with its retail electric customer's regular billing statements, at least quarterly, a voluntary option to purchase qualified alternative energy resources. The option may allow customers to purchase qualified alternative energy resources at fixed or variable rates and for fixed or variable periods of time, including but not limited to monthly, quarterly, or annual purchase agreements. A utility may provide qualified alternative energy resource options through either: (a) Resources it owns or contracts for; or (b) the purchase of credits issued by a clearinghouse or other system by which the utility may secure, for trade or other consideration, verifiable evidence that a second party has a qualified alternative energy resource and that the second party agrees to transfer such evidence exclusively to the benefit of the utility.

(3) For the purposes of this section, a "qualified alternative energy resource" means the electricity or thermal energy produced from generation facilities that are fueled by: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; (f) gas produced during the treatment of wastewater; (g) qualified hydropower; or (h) biomass energy based on animal waste or solid or liquid organic fuels from wood, forest, or field residues, or dedicated energy

crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(4) For the purposes of this section, "qualified hydropower" means the energy produced either: (a) As a result of modernizations or upgrades made after June 1, 1998, to hydropower facilities operating on May 8, 2001, that have been demonstrated to reduce the mortality of anadromous fish; or (b) by run of the river or run of the canal hydropower facilities that are not responsible for obstructing the passage of anadromous fish.

(5) The rates, terms, conditions, and customer notification of each utility's option or options offered in accordance with this section must be approved by the governing body of the consumer-owned utility or by the commission for investor-owned utilities. All costs and benefits associated with any option offered by an electric utility under this section must be allocated to the customers who voluntarily choose that option and may not be shifted to any customers who have not chosen such option. Utilities may pursue known, lawful aggregated purchasing of qualified alternative energy resources with other utilities to the extent aggregated purchasing can reduce the unit cost of qualified alternative energy resources, and are encouraged to investigate opportunities to aggregate the purchase of alternative energy resources by their customers. Aggregated purchases by investor-owned utilities must comply with any applicable rules or policies adopted by the commission related to least-cost planning or the acquisition of renewable resources.

(6) Each consumer-owned utility must maintain and make available upon request of the department and each investor-owned utility must maintain and make available upon request of the commission information describing the option or options it is offering its customers under the requirements of this section, the rate of customer participation, the amount of qualified alternative energy resources purchased by customers, the amount of utility investments in qualified alternative energy resources, and the results of pursuing aggregated purchasing opportunities. The department and the commission shall report the information to the appropriate committees of the legislature upon request.

Passed by the House February 12, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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## CHAPTER 130

[Second Substitute Senate Bill 5064]

### SENTENCING—OFFENSES COMMITTED BEFORE AGE EIGHTEEN

AN ACT Relating to persons sentenced for offenses committed prior to reaching eighteen years of age; amending RCW 9.94A.510, 9.94A.540, 9.94A.6332, 9.95.425, 9.95.430, 9.95.435, 9.95.440, and 10.95.030; reenacting and amending RCW 9.94A.729; adding a new section to chapter 9.94A RCW; adding new sections to chapter 10.95 RCW; creating a new section; 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:

**Sec. 1.** RCW 9.94A.510 and 2002 c 290 s 10 are each amended to read as follows:

TABLE 1  
Sentencing Grid

| SERIOUSNESS<br>LEVEL | OFFENDER SCORE   |                      |                      |                      |                       |                      |                      |                       |                       |                      |
|----------------------|--|----------------------|----------------------|----------------------|-----------------------|----------------------|----------------------|-----------------------|-----------------------|----------------------|
|                      | 0  | 1                    | 2                    | 3                    | 4                     | 5                    | 6                    | 7                     | 8                     | 9 or<br>more         |
| XVI                  | Life sentence without parole/death penalty for offenders at or over the age of eighteen. For offenders under the age of eighteen, a term of twenty-five years to life. |                      |                      |                      |                       |                      |                      |                       |                       |                      |
| XV                   | 23y4m<br>240-<br>320   | 24y4m<br>250-<br>333 | 25y4m<br>261-<br>347 | 26y4m<br>271-<br>361 | 27y4m<br>281-<br>374  | 28y4m<br>291-<br>388 | 30y4m<br>312-<br>416 | 32y10m<br>338-<br>450 | 36y<br>370-<br>493    | 40y<br>411-<br>548   |
| XIV                  | 14y4m<br>123-<br>220   | 15y4m<br>134-<br>234 | 16y2m<br>144-<br>244 | 17y<br>154-<br>254   | 17y11m<br>165-<br>265 | 18y9m<br>175-<br>275 | 20y5m<br>195-<br>295 | 22y2m<br>216-<br>316  | 25y7m<br>257-<br>357  | 29y<br>298-<br>397   |
| XIII                 | 12y<br>123-<br>164   | 13y<br>134-<br>178   | 14y<br>144-<br>192   | 15y<br>154-<br>205   | 16y<br>165-<br>219    | 17y<br>175-<br>233   | 19y<br>195-<br>260   | 21y<br>216-<br>288    | 25y<br>257-<br>342    | 29y<br>298-<br>397   |
| XII                  | 9y<br>93-<br>123   | 9y11m<br>102-<br>136 | 10y9m<br>111-<br>147 | 11y8m<br>120-<br>160 | 12y6m<br>129-<br>171  | 13y5m<br>138-<br>184 | 15y9m<br>162-<br>216 | 17y3m<br>178-<br>236  | 20y3m<br>209-<br>277  | 23y3m<br>240-<br>318 |
| XI                   | 7y6m<br>78-<br>102   | 8y4m<br>86-<br>114   | 9y2m<br>95-<br>125   | 9y11m<br>102-<br>136 | 10y9m<br>111-<br>147  | 11y7m<br>120-<br>158 | 14y2m<br>146-<br>194 | 15y5m<br>159-<br>211  | 17y11m<br>185-<br>245 | 20y5m<br>210-<br>280 |
| X                    | 5y<br>51-<br>68  | 5y6m<br>57-<br>75    | 6y<br>62-<br>82      | 6y6m<br>67-<br>89    | 7y<br>72-<br>96       | 7y6m<br>77-<br>102   | 9y6m<br>98-<br>130   | 10y6m<br>108-<br>144  | 12y6m<br>129-<br>171  | 14y6m<br>149-<br>198 |
| IX                   | 3y<br>31-<br>41  | 3y6m<br>36-<br>48    | 4y<br>41-<br>54      | 4y6m<br>46-<br>61    | 5y<br>51-<br>68       | 5y6m<br>57-<br>75    | 7y6m<br>77-<br>102   | 8y6m<br>87-<br>116    | 10y6m<br>108-<br>144  | 12y6m<br>129-<br>171 |
| VIII                 | 2y<br>21-<br>27  | 2y6m<br>26-<br>34    | 3y<br>31-<br>41      | 3y6m<br>36-<br>48    | 4y<br>41-<br>54       | 4y6m<br>46-<br>61    | 6y6m<br>67-<br>89    | 7y6m<br>77-<br>102    | 8y6m<br>87-<br>116    | 10y6m<br>108-<br>144 |
| VII                  | 18m<br>15-<br>20   | 2y<br>21-<br>27      | 2y6m<br>26-<br>34    | 3y<br>31-<br>41      | 3y6m<br>36-<br>48     | 4y<br>41-<br>54      | 5y6m<br>57-<br>75    | 6y6m<br>67-<br>89     | 7y6m<br>77-<br>102    | 8y6m<br>87-<br>116   |
| VI                   | 13m<br>12+-<br>14  | 18m<br>15-<br>20     | 2y<br>21-<br>27      | 2y6m<br>26-<br>34    | 3y<br>31-<br>41       | 3y6m<br>36-<br>48    | 4y6m<br>46-<br>61    | 5y6m<br>57-<br>75     | 6y6m<br>67-<br>89     | 7y6m<br>77-<br>102   |
| V                    | 9m<br>6-<br>12   | 13m<br>12+-<br>14    | 15m<br>13-<br>17     | 18m<br>15-<br>20     | 2y2m<br>22-<br>29     | 3y2m<br>33-<br>43    | 4y<br>41-<br>54      | 5y<br>51-<br>68       | 6y<br>62-<br>82       | 7y<br>72-<br>96      |
| IV                   | 6m<br>3-<br>9  | 9m<br>6-<br>12       | 13m<br>12+-<br>14    | 15m<br>13-<br>17     | 18m<br>15-<br>20      | 2y2m<br>22-<br>29    | 3y2m<br>33-<br>43    | 4y2m<br>43-<br>57     | 5y2m<br>53-<br>70     | 6y2m<br>63-<br>84    |

|     |      |      |    |     |      |     |      |      |      |      |
|-----|------|------|----|-----|------|-----|------|------|------|------|
| III | 2m   | 5m   | 8m | 11m | 14m  | 20m | 2y2m | 3y2m | 4y2m | 5y   |
|     | 1-   | 3-   | 4- | 9-  | 12+- | 17- | 22-  | 33-  | 43-  | 51-  |
|     | 3    | 8    | 12 | 12  | 16   | 22  | 29   | 43   | 57   | 68   |
| II  |      | 4m   | 6m | 8m  | 13m  | 16m | 20m  | 2y2m | 3y2m | 4y2m |
|     | 0-90 | 2-   | 3- | 4-  | 12+- | 14- | 17-  | 22-  | 33-  | 43-  |
|     | Days | 6    | 9  | 12  | 14   | 18  | 22   | 29   | 43   | 57   |
| I   |      |      | 3m | 4m  | 5m   | 8m  | 13m  | 16m  | 20m  | 2y2m |
|     | 0-60 | 0-90 | 2- | 2-  | 3-   | 4-  | 12+- | 14-  | 17-  | 22-  |
|     | Days | Days | 5  | 6   | 8    | 12  | 14   | 18   | 22   | 29   |

Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12+ equals one year and one day.

**Sec. 2.** RCW 9.94A.540 and 2005 c 437 s 2 are each amended to read as follows:

(1) Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total confinement not less than sixty months.

(e) An offender convicted of the crime of aggravated first degree murder for a murder that was committed prior to the offender's eighteenth birthday shall be sentenced to a term of total confinement not less than twenty-five years.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.728(~~((4))~~) (3).

(3)(a) Subsection (1)(a) through (d) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005.

**Sec. 3.** RCW 9.94A.6332 and 2010 c 224 s 11 are each amended to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(5) If the offender was released pursuant to section 10 of this act, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(6) If the offender was sentenced pursuant to RCW 10.95.030(3) or section 11 of this act, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(7) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

~~((6))~~ (8) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

**Sec. 4.** RCW 9.94A.729 and 2013 2nd sp.s. c 14 s 2 and 2013 c 266 s 1 are each reenacted and amended to read as follows:

(1)(a) 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 adopted 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.

(b) 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 number of days of early release credits lost or not earned. The department may approve a jail certification from a correctional agency that calculates early release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. The department must adjust an offender's rate of early release listed on the jail certification to be consistent with the rate applicable to



offenders in the department's facilities. However, the department is not authorized to adjust the number of presentence early release days that the jail has certified as lost or not earned.

(2) 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.

(3) An offender may earn early release time as follows:

(a) In the case of an offender sentenced pursuant to RCW 10.95.030(3) or section 11 of this act, the aggregate earned release time may not exceed ten percent of the sentence.

(b) 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.

~~((b))~~ (c) 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.

~~((c))~~ (d) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) 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

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) Has no prior conviction for the offenses listed in ~~((c))~~ (d)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007, while under community custody.

~~((d))~~ (e) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)~~((c))~~ (d) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)~~((c))~~ (d) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to community custody in lieu of earned release time;

(b) 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 custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time 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;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan.

A voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) The department shall maintain a list of housing providers that meets the requirements of RCW 72.09.285. If more than two voucher recipients will be residing per dwelling unit, as defined in RCW 59.18.030, rental vouchers for those recipients may only be paid to a housing provider on the department's list;

(f) For each offender who is the recipient of a rental voucher, the department shall gather data as recommended by the Washington state institute for public policy in order to best demonstrate whether rental vouchers are effective in reducing recidivism.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section.

**Sec. 5.** RCW 9.95.425 and 2009 c 28 s 30 are each amended to read as follows:

(1) Whenever the board or a community corrections officer of this state has reason to believe an offender released under RCW 9.95.420, 10.95.030(3), or section 10 of this act has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be

revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board, with recommendations.

(2) If the board or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.740.

**Sec. 6.** RCW 9.95.430 and 2001 2nd sp.s. c 12 s 308 are each amended to read as follows:

Any offender released under RCW 9.95.420, 10.95.030(3), or section 10 of this act who is arrested and detained in physical custody by the authority of a community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order reinstating the offender's release on the same or modified conditions. All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

**Sec. 7.** RCW 9.95.435 and 2007 c 363 s 3 are each amended to read as follows:

(1) If an offender released by the board under RCW 9.95.420, 10.95.030(3), or section 10 of this act violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend the release and sanction up to sixty days' confinement in a local correctional facility for each violation, or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420, 10.95.030(3), or section 10 of this act violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420, 10.95.030(3), or section 10 of this act is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a

correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members or designees of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with findings and conclusions which include the evidence relied upon, and the reasons the particular sanction was imposed. The board shall notify the offender of the right to appeal the sanction and the right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. The board or its designee shall make a determination whether probable cause exists to believe the violation or violations occurred. The determination shall be made within forty-eight hours of receipt of the allegation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the presiding hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody upon a finding of violation is a probable sanction for the violation. The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has waived the right to counsel; and

(e) The sanction shall take effect if affirmed by the presiding hearing officer.

(5) Within seven days after the presiding hearing officer's decision, the offender may appeal the decision to the full board or to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (a) The crime of conviction; (b) the violation committed; (c) the offender's risk of reoffending; or (d) the safety of the community.

(6) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

**Sec. 8.** RCW 9.95.440 and 2008 c 231 s 45 are each amended to read as follows:

In the event the board suspends the release status of an offender released under RCW 9.95.420, 10.95.030(3), or section 10 of this act by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable

under RCW 9.94A.704. Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement.

**Sec. 9.** RCW 10.95.030 and 2010 c 94 s 3 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. In no case, however, shall a person be sentenced to death if the person had an intellectual disability at the time the crime was committed, under the definition of intellectual disability set forth in (a) of this subsection. A diagnosis of intellectual disability shall be documented by a licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of intellectual disabilities. The defense must establish an intellectual disability by a preponderance of the evidence and the court must make a finding as to the existence of an intellectual disability.

(a) "Intellectual disability" means the individual has: (i) Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period.

(b) "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(c) "Significantly subaverage general intellectual functioning" means intelligence quotient seventy or below.

(d) "Adaptive behavior" means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age.

(e) "Developmental period" means the period of time between conception and the eighteenth birthday.

(3)(a)(i) Any person convicted of the crime of aggravated first degree murder for an offense committed prior to the person's sixteenth birthday shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of twenty-five years.

(ii) Any person convicted of the crime of aggravated first degree murder for an offense committed when the person is at least sixteen years old but less than eighteen years old shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than twenty-five years. A

minimum term of life may be imposed, in which case the person will be ineligible for parole or early release.

(b) In setting a minimum term, the court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012) including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated.

(c) A person sentenced under this subsection shall serve the sentence in a facility or institution operated, or utilized under contract, by the state. During the minimum term of total confinement, the person shall not be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave or absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (i) In the case of an offender in need of emergency medical treatment; or (ii) for an extraordinary medical placement when authorized under RCW 9.94A.728(3).

(d) Any person sentenced pursuant to this subsection shall be subject to community custody under the supervision of the department of corrections and the authority of the indeterminate sentence review board. As part of any sentence under this subsection, the court shall require the person to comply with any conditions imposed by the board.

(e) No later than five years prior to the expiration of the person's minimum term, the department of corrections shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(f) No later than one hundred eighty days prior to the expiration of the person's minimum term, the department of corrections shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. If the board does not order the person released, the board shall set a new minimum term not to exceed five additional years. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

(g) In a hearing conducted under (f) of this subsection, the board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be developed by rule. To facilitate victim and survivor of victim involvement,

county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.

(h) An offender released by the board is subject to the supervision of the department of corrections for a period of time to be determined by the board. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

NEW SECTION, Sec. 10. A new section is added to chapter 9.94A RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's eighteenth birthday, the person has not committed a major violation in the twelve months prior to filing the petition for early release, and the current sentence was not imposed under RCW 10.95.030 or 9.94A.507.

(2) When an offender who will be eligible to petition under this section has served fifteen years, the department shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) No later than one hundred eighty days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be developed by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.

(5) An offender released by the board is subject to the supervision of the department for a period of time to be determined by the board. The department

shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

(6) An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the board.

**NEW SECTION. Sec. 11.** A new section is added to chapter 10.95 RCW to read as follows:

(1) A person, who was sentenced prior to June 1, 2014, to a term of life without the possibility of parole for an offense committed prior to their eighteenth birthday, shall be returned to the sentencing court or the sentencing court's successor for sentencing consistent with RCW 10.95.030. Release and supervision of a person who receives a minimum term of less than life will be governed by RCW 10.95.030.

(2) The court shall provide an opportunity for victims and survivors of victims of any crimes for which the offender has been convicted to present a statement personally or by representation.

(3) The court's order setting a minimum term is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

(4) A resentencing under this section shall not reopen the defendant's conviction to challenges that would otherwise be barred by RCW 10.73.090, 10.73.100, 10.73.140, or other procedural barriers.

**NEW SECTION. Sec. 12.** A new section is added to chapter 10.95 RCW to read as follows:

Sections 1 through 9 of this act apply to all sentencing hearings conducted on or after June 1, 2014, regardless of the date of an offender's underlying offense.

**NEW SECTION. Sec. 13.** (1) The legislature shall convene a task force to examine juvenile sentencing reform, with the following voting members:

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses in the house of representatives;

(c) A representative from the governor's office;

(d) The assistant secretary of the department of social and health services overseeing the juvenile justice and rehabilitation administration or his or her designee;

(e) The secretary of the department of corrections or his or her designee;

(f) A superior court judge from the superior court judges association family and juvenile law subcommittee, who is familiar with cases involving the transfer of youth to the adult criminal justice system and sentencing of youth in the adult criminal justice system;

(g) A representative of the Washington association of prosecuting attorneys;

(h) A representative of the Washington association of criminal defense lawyers or the Washington defender association;



(i) A representative from the Washington coalition of crime victim advocates;

(j) A representative from the juvenile court administrator's association;

(k) A representative from the Washington association of sheriffs and police chiefs;

(l) A representative from law enforcement who works with juveniles; and

(m) A representative from the sentencing guidelines commission.

(2) The task force shall choose two cochairs from among its legislative members.

(3) The task force shall undertake a thorough review of juvenile sentencing as it relates to the intersection of the adult and juvenile justice systems and make recommendations for reform that promote improved outcomes for youth, public safety, and taxpayer resources. The review shall include, but is not limited to:

(a) The process and circumstances for transferring a juvenile to adult jurisdiction, including discretionary and mandatory decline hearings and automatic transfer to adult jurisdiction;

(b) Sentencing standards, term lengths, sentencing enhancements, and stacking provisions that apply once a juvenile is transferred to adult jurisdiction; and

(c) The appropriate custody, treatment, and resources for declined youth who will complete their term of confinement prior to reaching age twenty-one.

(4) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(5) Legislative members of the task force may be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The expenses of the task force shall be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house executive rules committee, or their successor committees.

(7) The task force shall report its findings and recommendations to the governor and the appropriate committees of the legislature by December 1, 2014.

**NEW SECTION. Sec. 14.** Section 13 of this act expires June 1, 2015.

**NEW SECTION. Sec. 15.** 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. 16.** 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 June 1, 2014.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 131

[Substitute Senate Bill 5123]

## FARM INTERNSHIP PROGRAM

AN ACT Relating to a farm internship program; reenacting and amending RCW 49.46.010; adding a new section to chapter 49.12 RCW; adding a new section to chapter 51.16 RCW; adding a new section to chapter 50.04 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 49.12 RCW to read as follows:

(1) The director shall establish a farm internship pilot project until December 1, 2017, for the employment of farm interns on small farms under special certificates at wages, if any, as authorized by the department and subject to such limitations as to time, number, proportion, and length of service as provided in this section and as prescribed by the department. The pilot project consists of the following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, and Thurston.

(2) A small farm may employ no more than three interns at one time under this section.

(3) A small farm must apply for a special certificate on a form made available by the director. The application must set forth: The name of the farm and a description of the farm seeking the certificate; the type of work to be performed by a farm intern; a description of the internship program; the period of time for which the certificate is sought and the duration of an internship; the number of farm interns for which a special certificate is sought; the wages, if any, that will be paid to the farm intern; any room and board, stipends, and other remuneration the farm will provide to a farm intern; and the total number of workers employed by the farm.

(4) Upon receipt of an application, the department shall review the application and issue a special certificate to the requesting farm within fifteen days if the department finds that:

(a) The farm qualifies as a small farm;

(b) There have been no serious violations of chapter 49.46 RCW or Title 51 RCW that provide reasonable grounds to believe that the terms of an internship agreement may not be complied with;

(c) The issuance of a certificate will not create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry or occupation at which the intern is to be employed;

(d) A farm intern will not displace an experienced worker; and

(e) The farm demonstrates that the interns will perform work for the farm under an internship program that: (i) Provides a curriculum of learning modules and supervised participation in farm work activities designed to teach farm interns about farming practices and farm enterprises; (ii) is based on the bona fide curriculum of an educational or vocational institution; and (iii) is reasonably designed to provide the intern with vocational knowledge and skills about farming practices and enterprises. In assessing an internship program, the department may consult with relevant college and university departments and

extension programs and state and local government agencies involved in the regulation or development of agriculture.

(5) A special certificate issued under this section must specify the terms and conditions under which it is issued, including: The name of the farm; the duration of the special certificate allowing the employment of farm interns and the duration of an internship; the total number of interns authorized under the special certificate; the authorized wage rate, if any; and any room and board, stipends, and other remuneration the farm will provide to the farm intern. A farm worker may be paid at wages specified in the certificate only during the effective period of the certificate and for the duration of the internship.

(6) If the department denies an application for a special certificate, notice of denial must be mailed to the farm. The farm listed on the application may, within fifteen days after notice of such action has been mailed, file with the director a petition for review of the denial, setting forth grounds for seeking such a review. If reasonable grounds exist, the director or the director's authorized representative may grant such a review and, to the extent deemed appropriate, afford all interested persons an opportunity to be heard on such review.

(7) Before employing a farm intern, a farm must submit a statement on a form made available by the director stating that the farm understands: The requirements of the industrial welfare act, chapter 49.12 RCW, that apply to farm interns; that the farm must pay workers' compensation premiums in the assigned intern risk class and must pay workers' compensation premiums for nonintern work hours in the applicable risk class; and that if the farm does not comply with subsection (8) of this section, the director may revoke the special certificate.

(8) The director may revoke a special certificate issued under this section if a farm fails to: Comply with the requirements of the industrial welfare act, chapter 49.12 RCW, that apply to farm interns; pay workers' compensation premiums in the assigned intern risk class; or pay workers' compensation premiums in the applicable risk class for nonintern work hours.

(9) Before the start of a farm internship, the farm and the intern must sign a written agreement and send a copy of the agreement to the department. The written agreement must, at a minimum:

(a) Describe the internship program offered by the farm, including the skills and objectives the program is designed to teach and the manner in which those skills and objectives will be taught;

(b) Explicitly state that the intern is not entitled to unemployment benefits or minimum wages for work and activities conducted pursuant to the internship program for the duration of the internship;

(c) Describe the responsibilities, expectations, and obligations of the intern and the farm, including the anticipated number of hours of farm activities to be performed by and the anticipated number of hours of curriculum instruction provided to the intern per week;

(d) Describe the activities of the farm and the type of work to be performed by the farm intern; and

(e) Describes any wages, room and board, stipends, and other remuneration the farm will provide to the farm intern.

(10) The department must limit the administrative costs of implementing the internship pilot program by relying on farm organizations and other stakeholders to perform outreach and inform the farm community of the program and by

limiting employee travel to the investigation of allegations of noncompliance with program requirements.

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

(a) "Farm intern" means an individual who provides services to a small farm under a written agreement and primarily as a means of learning about farming practices and farm enterprises.

(b) "Farm internship program" means an internship program described under subsection (4)(e) of this section.

(c) "Small farm" means a farm:

(i) Organized as a sole proprietorship, partnership, or corporation;

(ii) That reports on the applicant's schedule F of form 1040 or other applicable form filed with the United States internal revenue service annual sales less than two hundred fifty thousand dollars; and

(iii) Where all the owners or partners of the farm provide regular labor to and participate in the management of the farm, and own or lease the productive assets of the farm.

(12) The department shall monitor and evaluate the farm internships authorized by this section and report to the appropriate committees of the legislature by December 31, 2017. The report must include, but not be limited to: The number of small farms that applied for and received special certificates; the number of interns employed as farm interns; the nature of the educational activities provided to the farm interns; the wages and other remuneration paid to farm interns; the number of and type of workers' compensation claims for farm interns; the employment of farm interns following farm internships; and other matters relevant to assessing farm internships authorized in this section.

**Sec. 2.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the

services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) Any farm intern providing his or her services to a small farm which has a special certificate issued under section 1 of this act;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director.

**NEW SECTION. Sec. 3.** A new section is added to chapter 51.16 RCW to read as follows:

The department shall adopt rules to provide special workers' compensation risk class or classes for farm interns providing agricultural labor pursuant to a farm internship program under section 1 of this act. The rules must include any requirements for obtaining a special risk class that must be met by small farms.

**NEW SECTION. Sec. 4.** A new section is added to chapter 50.04 RCW to read as follows:

(1) Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030, or 50.50.010, the term "employment" does not include service performed in agricultural labor by a farm intern providing his or her services under a farm internship program as established in section 1 of this act.

(2) For purposes of this section, "agricultural labor" means:

(a) Services performed on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment;

(b) Services performed in packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this subsection (2)(b) are not applicable with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms; or

(c) Direct local sales of any agricultural or horticultural commodity after its delivery to a terminal market for distribution or consumption.

**NEW SECTION. Sec. 5.** This act expires December 31, 2017.

Passed by the Senate February 18, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 132

[Substitute Senate Bill 6014]

### VESSEL OPERATION UNDER THE INFLUENCE

AN ACT Relating to operation of a vessel under the influence of an intoxicant; and amending RCW 79A.60.040 and 79A.60.700.

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

**Sec. 1.** RCW 79A.60.040 and 2013 c 278 s 1 are each amended to read as follows:

(1) It is unlawful for any person to operate a vessel in a reckless manner.

(2) It is unlawful for a person to operate a vessel while under the influence of intoxicating liquor, marijuana, or any drug. A person is considered to be under the influence of intoxicating liquor, marijuana, or any drug if, within two hours of operating a vessel:

(a) The person has an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(3) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(4)(a) Any person who operates a vessel within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of the person's breath (~~(or blood)~~) for the purpose of determining the alcohol concentration(~~(, THC concentration, or presence of any drug)~~) in the person's 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 was operating a vessel while under the influence of intoxicating liquor(~~(, marijuana,)~~) or a combination of intoxicating liquor and any other drug.

(b) When an arrest results from an accident in which there has been serious bodily injury to another person or death or the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of THC or any other drug, a blood test may be administered with the consent of the arrested person and a valid waiver of the warrant requirement or without the consent of the person so arrested pursuant to a search warrant or when exigent circumstances exist.

(c) Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(d) An arresting officer may administer field sobriety tests when circumstances permit.

(5) The test or tests of breath must be administered pursuant to RCW 46.20.308. (~~(Where the officer has reasonable grounds to believe that the person is under the influence of a drug, or 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, a blood test must be administered by a qualified person as provided in RCW 46.61.506(5).))~~ The officer shall warn the person that if the person refuses to take the test, the person will be issued a class 1 civil infraction under RCW 7.80.120.

(6) A violation of subsection (1) of this section is a misdemeanor. A violation of subsection (2) of this section is a gross misdemeanor. In addition to

the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

**Sec. 2.** RCW 79A.60.700 and 2013 c 278 s 2 are each amended to read as follows:

(1) The refusal of a person to submit to a test of the alcohol concentration, THC concentration, or presence of any drug in the person's blood or breath is not admissible into evidence at a subsequent criminal trial.

(2) A person's refusal to submit to a test or tests pursuant to RCW 79A.60.040(4)(a) constitutes a class 1 civil infraction under RCW 7.80.120.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 133

[Senate Bill 6035]

### SKI AREA CONVEYANCES—SAFETY

AN ACT Relating to the safety of ski area conveyances; and amending RCW 79A.40.010, 79A.40.020, 79A.40.050, 79A.40.060, 79A.40.070, and 79A.45.060.

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

**Sec. 1.** RCW 79A.40.010 and 1965 ex.s. c 85 s 1 are each amended to read as follows:

Every owner or operator of any recreational device designed and operated for the conveyance of persons which aids in promoting entertainment, pleasure, play, relaxation, or instruction, specifically including devices generally associated with winter sports activities such as (~~ski lifts, ski tows, j-bars, t-bars, ski mobiles, chair~~) aerial lifts, surface lifts, and similar devices and equipment, shall construct, furnish, maintain, and provide safe and adequate facilities and equipment with which safely and properly to receive and transport all persons offered to and received by the owner or operator of such devices, and to promote the safety of such owner's or operator's patrons, employees and the public. The owner or operator of the devices and equipment covered by this section shall be deemed not to be a common carrier.

**Sec. 2.** RCW 79A.40.020 and 2000 c 11 s 87 are each amended to read as follows:

(1) It shall be unlawful after June 10, 1959, to construct or install any such recreational device as set forth in RCW 79A.40.010 without first submitting plans and specifications for such device to the state parks and recreation commission and receiving the approval of the commission for such construction or installation.

(2) The plans and specifications must be submitted to the commission in a manner provided by the commission accompanied by a certification by a qualified engineer. The certification must indicate that the conveyance was designed by a qualified engineer and that the conveyance, if properly installed as provided in the plan, will be safe. Upon completion of the installation, the operator or owner shall submit further certification by a qualified engineer to the commission that the conveyance has been installed in accordance with the plan.



The qualified engineer submitting a certification as provided in this chapter must be formally approved to submit such a certification by the commission. The commission shall establish the necessary qualifications for any engineer seeking the ability to certify equipment pursuant to this chapter.

(3) Violation of this section shall be a misdemeanor.

**Sec. 3.** RCW 79A.40.050 and 1959 c 327 s 5 are each amended to read as follows:

The state parks and recreation commission shall employ or retain a person qualified in engineering experience and training who shall be designated as the inspector of recreational devices, and may employ such additional employees as are necessary to properly administer this chapter. The inspector and such additional employees may be hired on a temporary basis or borrowed from other state departments, or the commission may contract with individuals or firms for such inspecting service on an independent basis. ~~((The commission shall prescribe the salary or other remuneration for such service.))~~

**Sec. 4.** RCW 79A.40.060 and 2000 c 11 s 89 are each amended to read as follows:

The inspector of recreational devices and his or her assistants shall inspect all equipment and appliances connected with the recreational devices set forth in RCW 79A.40.010 and make such reports of his or her inspection to the commission as may be required. He or she shall, on discovering any defective equipment, or appliances connected therewith, rendering the use of the equipment dangerous, immediately report the same to the owner or operator of the device on which it is found, and in addition report it to the commission. If in the opinion of the inspector the continued operation of the defective equipment constitutes an immediate danger to the safety of the persons operating or being conveyed by such equipment, the inspector may condemn such equipment and shall immediately notify the commission of his or her action in this respect: PROVIDED, That inspection required by this chapter must be conducted at least once each year, prior to each use season.

**Sec. 5.** RCW 79A.40.070 and 1997 c 137 s 5 are each amended to read as follows:

The program authorized by this chapter and chapter 79A.45 RCW must be funded by fees charged to the owners or operators of ski areas. The expenses incurred in connection with making inspections and reviewing plans and specifications under this chapter shall be paid by the owner or operator of such recreational devices ~~((either))~~ by reimbursing the commission for the costs it incurred ~~((or by paying directly such individuals or firms that may be engaged by the commission to accomplish the inspection service. Payment shall be made only upon notification by the commission of the amount due))~~ to hire an engineer to complete an inspection or perform plan review. The commission shall maintain accurate and complete records of the costs incurred for each inspection and plan review for construction approval and shall assess the respective owners or operators of ~~((said))~~ the recreational devices ~~((only for the actual costs incurred by the commission for such safety inspections and plan review for construction approval))~~ an administrative fee associated with the review or service provided by the commission, which amount may vary based on the service or level of review required. The commission shall adopt a fee

schedule for the services provided under this chapter, subject to RCW 43.135.055, by rule. The costs as assessed by the commission shall be a lien on the equipment of the owner or operator of the recreational devices so inspected or installed. Such moneys collected by the commission under this section shall be paid into the state parks renewal and stewardship account.

**Sec. 6.** RCW 79A.45.060 and 1977 ex.s. c 139 s 4 are each amended to read as follows:

(1) Every (~~tramway, ski lift, or commercial skimobile~~) operator of an aerial lift, surface lift, or similar device shall maintain liability insurance of not less than one (~~hundred thousand~~) million dollars per (~~person per accident and of not less than two hundred thousand dollars per accident~~) occurrence.

(2) (~~Every operator of a rope tow, wire rope tow, j bar, t bar, or similar device shall maintain liability insurance of not less than twenty five thousand dollars per person per accident and of not less than fifty thousand dollars per accident.~~

~~(3))~~ This section shall not apply to operators of tramways that are not open to the general public and that are operated without charge, except that this section shall apply to operators of tramways that are operated by schools, ski clubs, or similar organizations.

Passed by the Senate February 12, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 134

[Substitute Senate Bill 6054]

### AERONAUTIC SAFETY

AN ACT Relating to aeronautic safety; adding a new section to chapter 14.16 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** It is the intent of the legislature that pilots that engage in low flying activities, such as aerial applicators and search and rescue pilots, are provided with an as safe as possible flying environment. It is also the intent of the legislature to create a mechanism for alerting pilots of guyed towers that may be erected at short notice and may be otherwise difficult to see from the air, posing an air safety hazard.

**NEW SECTION. Sec. 2.** A new section is added to chapter 14.16 RCW to read as follows:

(1) Except as provided otherwise in this section, a guyed tower twenty-five feet or more in height that is located outside the boundaries of an incorporated city or town on land that is primarily rural or undeveloped or used for agricultural purposes, or that is primarily desert, and where such guyed tower's appearance is not otherwise governed by state or federal law, rule, or regulation, is subject to the following requirements:

(a) The tower must be painted in five foot high alternating bands of aviation orange and white.

(b) The tower must have a flashing light at the top of the tower. The light must be visible in clear air from a distance of two thousand feet when flashing. Such a light must also be visible with night vision goggles.

(c) The surface area under the footprint of the tower and the circular area surrounding each outer tower anchor, with a radius of six feet, should have a contrasting appearance with any surrounding vegetation.

(d) Two marker balls must be attached to and evenly spaced on each of the outside guy wires.

(e) The tower must have a seven foot long safety sleeve at each anchor point and must extend from the anchor point along each guy wire attached to the anchor point.

(2) Any guyed tower that was erected prior to the effective date of this section must be modified as required under this section within one year of the effective date of this section.

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

(a) "Guyed tower" means a tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself.

(b) "Height" means the distance measured from the original grade at the base of the tower to the highest point of the tower.

(4) This section does not apply to:

(a) Guyed towers used for military purposes;

(b) Power poles or nonguyed tower structures owned and operated by an electric utility as defined in RCW 80.80.010;

(c) Any structure for which the primary purpose is to support telecommunications equipment, such as equipment for amateur radio and broadcast radio and television services regulated by the federal communications commission;

(d) Any guyed tower that is within fifty feet of a structure or vegetation of equal or greater height; and

(e) Any guyed tower that is attached to a large mobile motorized machine with a large visible base equipped with wheels, tracks, or skids and with winches and utilized to lift or pull heavy loads, such as a tower used to yard logs.

(5) A person who violates a provision of this section is guilty of a misdemeanor.

Passed by the Senate March 10, 2014.

Passed by the House March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 135

[Substitute Senate Bill 6086]

### AGENCY PURCHASING AND PROCUREMENT—POLYCHLORINATED BIPHENYLS

AN ACT Relating to reducing PCBs in products purchased by agencies; reenacting and amending RCW 39.26.010; adding new sections to chapter 39.26 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** Polychlorinated biphenyls, commonly known as PCBs, are a family of human-made organic chemicals that were used in many industrial and commercial products such as insulating fluids for electric transformers and capacitors, hydraulic fluids, plasticizers, paint additives, lubricants, inks, caulk, and carbonless copy paper. PCBs were used because of their fire resistance, chemical stability, and electrical insulating properties. PCBs are also found in products as an unintentional by-product of manufacturing processes. PCBs are ubiquitous in the environment because of their stability, extensive previous use, by-production in manufacturing, inadvertent release, and the inability to control and eliminate them through current waste management practices. PCBs are persistent, bioaccumulative, and toxic, and they cycle between the air, soil, and water. PCBs have been shown to cause cancer and affect the human immune, reproductive, nervous, and endocrine systems. The United States toxic substances control act prohibited the commercial production of PCBs in 1979. However, the United States environmental protection agency rules implementing the ban provides exemptions for certain products containing PCBs at concentrations of fifty parts per million or less as a result of manufacturing processes and therefore the continued manufacture, processing, distribution, and use of products containing PCBs remains permitted.

**Sec. 2.** RCW 39.26.010 and 2012 c 224 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

(2) "Bid" means an offer, proposal, or quote for goods or services in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.

(3) "Bidder" means an individual or entity who submits a bid, quotation, or proposal in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.

(4) "Businesses owned and operated by persons with disabilities" means any for-profit business certified under chapter 39.19 RCW as being owned and controlled by persons who have been either:

(a) Determined by the department of social and health services to have a developmental disability, as defined in RCW 71A.10.020;

(b) Determined by an agency established under Title I of the federal vocational rehabilitation act to be or have been eligible for vocational rehabilitation services;

(c) Determined by the federal social security administration to be or have been eligible for either social security disability insurance or supplemental security income; or

(d) Determined by the United States department of veterans affairs to be or have been eligible for vocational rehabilitation services due to service-connected disabilities, under 38 U.S.C. Sec. 3100 et seq.

(5) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(6) "Community rehabilitation program of the department of social and health services" means any entity that:

(a) Is registered as a nonprofit corporation with the secretary of state; and

(b) Is recognized by the department of social and health services, division of vocational rehabilitation as eligible to do business as a community rehabilitation program.

(7) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to bidders and culminating in a selection based on predetermined criteria.

(8) "Contractor" means an individual or entity awarded a contract with an agency to perform a service or provide goods.

(9) "Debar" means to prohibit a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.

(10) "Department" means the department of enterprise services.

(11) "Director" means the director of the department of enterprise services.

(12) "Estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.

(13) "Goods" means products, materials, supplies, or equipment provided by a contractor.

(14) "In-state business" means a business that has its principal office located in Washington.

(15) "Life-cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.

(16) "Master contracts" means a contract for specific goods or services, or both, that is solicited and established by the department in accordance with procurement laws and rules on behalf of and for general use by agencies as specified by the department.

(17) "Microbusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue.

(18) "Minibusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal tax return or on its return filed with the department of revenue.

(19) "Purchase" means the acquisition of goods or services, including the leasing or renting of goods.

(20) "Services" means labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work.

(21) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:

(a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:

(i) Fifty or fewer employees; or

(ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

(b) Is certified with the office of women and minority business enterprises under chapter 39.19 RCW.

(22) "Sole source" means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.

(23) "Washington grown" has the definition in RCW 15.64.060.

(24) "Polychlorinated biphenyls" means any polychlorinated biphenyl congeners and homologs.

(25) "Practical quantification limit" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions.

**NEW SECTION. Sec. 3.** A new section is added to chapter 39.26 RCW to read as follows:

(1) The department shall establish purchasing and procurement policies that provide a preference for products and products in packaging that does not contain polychlorinated biphenyls.

(2) No agency may knowingly purchase products or products in packaging containing polychlorinated biphenyls above the practical quantification limit except when it is not cost-effective or technically feasible to do so.

(3) Nothing in this section requires the department or any other state agency to breach an existing contract or dispose of stock that has been ordered or is in the possession of the department or other state agency as of the effective date of this section.

**NEW SECTION. Sec. 4.** A new section is added to chapter 39.26 RCW to read as follows:

(1) This chapter does not require the department to test every product procured. However, the department may accept from businesses, manufacturers, organizations, and individuals results obtained from an accredited laboratory or testing facility documenting product or product packaging polychlorinated biphenyl levels.

(2) The department may request suppliers of products to provide testing data from an accredited laboratory or testing facility documenting product or product packaging polychlorinated biphenyl levels.

Passed by the Senate March 11, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 136

[Substitute Senate Bill 6129]

## K-12 EDUCATION—PARAEDUCATOR DEVELOPMENT

AN ACT Relating to paraeducator development; adding a new section to chapter 28A.410 RCW; adding a new section to chapter 28B.50 RCW; creating new sections; making an appropriation; and providing an expiration date.

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

**\*NEW SECTION. Sec. 1.** *The legislature acknowledges that paraeducators have become a significant resource to students who need additional education assistance. School districts have come to rely upon paraeducators who, for instance, provided more than half of the hours of instruction in the 2012-13 school year to students in the learning assistance program, the transitional bilingual instruction program, the federal disadvantaged program, head start, and the federal limited English proficiency program. Paraeducators are often the primary caretakers in the classroom for students with special needs and provided more than half of the hours of instruction in the 2012-13 school year to students in special education.*

*The legislature further recognizes that there is significant variability in paraeducator standards. In some situations, paraeducators are expected to provide services for which they are not trained or qualified. In other situations, their knowledge, skills, and commitment to education are underused. A clear definition of the differentiated knowledge, skills, and abilities associated with different jobs will ensure that students receive the education services they need and deserve.*

*Paraeducator training and professional development varies significantly dependent upon school district and program. With few exceptions, paraeducator training has been significantly reduced over the last several years due to state and school district budget cuts.*

*A carefully constructed paraeducator development program is intended to place the highest qualified paraeducators working with the highest need students. Such a program when combined with a career ladder will offer paraeducators real opportunities for upward mobility. Since paraeducators more closely reflect the cultural diversity of the student population, a development program and career ladder is likely to encourage more paraeducators to become teachers. Training teachers how to work with a paraeducator in their classrooms will increase paraeducators' ability to teach students who need additional assistance.*

\*Sec. 1 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 2.** (1)(a) The professional educator standards board shall convene a work group to design program specific minimum employment standards for paraeducators, professional development and education opportunities that support the standards, a paraeducator career ladder, an articulated pathway for teacher preparation and certification, and teacher professional development on how to maximize the use of paraeducators in the classroom.

(b) The work group must include representatives of the professional educator standards board; the Green River Community College center of excellence for careers in education; educational service districts; community and

technical college paraeducator apprenticeship and certificate programs; colleges of education; teacher, paraeducator, principal, and administrator associations; career and technical education; special education parents and advocacy organizations; community-based organizations representing immigrant and refugee communities; community-based organizations representing communities of color; the educational opportunity gap oversight and accountability committee; and the office of the superintendent of public instruction.

(2) By January 10, 2015, the work group shall submit a report to the education committees of the legislature that recommends:

(a) Appropriate minimum employment standards and professional development opportunities for paraeducators who work in:

(i) English language learner programs, transitional bilingual instruction programs, and federal limited English proficiency programs; and

(ii) The learning assistance program and federal disadvantaged program;

(b) A career ladder that encourages paraeducators to pursue advanced education and professional development as well as increased instructional ability and responsibility;

(c) An articulated pathway for teacher preparation that includes:

(i) Paraeducator certificate and apprenticeship programs that offer course credits that apply to transferrable associate degrees and are aligned with the standards and competencies for teachers adopted by the professional educator standards board;

(ii) Associate degree programs that build on and do not duplicate the courses and competencies of paraeducator certificate programs, incorporate field experiences, are aligned with the standards and competencies for teachers adopted by the professional educator standards board, and are transferrable to bachelor's degree in education programs and teacher certification programs;

(iii) Bachelor's degree programs that lead to teacher certification that build on and do not duplicate the courses and competencies of transferrable associate degrees;

(iv) Incorporation of the standards for cultural competence developed by the professional educator standards board under RCW 28A.410.270 throughout the courses and curriculum of the pathway, particularly focusing on multicultural education and principles of language acquisition; and

(v) Comparing the current status of pathways for teacher certification to the elements of the articulated pathway, highlighting gaps and recommending strategies to address the gaps;

(d) Professional development for certificated employees that focuses on maximizing the success of paraeducators in the classroom.

(3) The work group must submit a final report of its recommendations to the education committees of the legislature by January 10, 2016, concerning:

(a) Minimum employment standards for basic education and special education paraeducators; and

(b) Appropriate professional development and training to help paraeducators meet the employment standards.

(4) This section expires June 30, 2016.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.410 RCW to read as follows:



The professional educator standards board and the state board for community and technical colleges may exercise their respective authorities regarding program approval to implement the articulated pathway for teacher preparation and certification recommended pursuant to section 2, chapter . . . , Laws of 2014 (section 2 of this act) in approved teacher certification programs and certificate and degree programs offered by community and technical colleges.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28B.50 RCW to read as follows:

Beginning with the 2015-16 academic year, any community or technical college that offers an apprenticeship program or certificate program for paraeducators must provide candidates the opportunity to earn transferrable course credits within the program. The programs must also incorporate the standards for cultural competence, including multicultural education and principles of language acquisition, developed by the professional educator standards board under RCW 28A.410.270.

**NEW SECTION. Sec. 5.** The sum of one hundred fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2015, from the general fund to the professional educator standards board to convene a work group in accordance with section 2 of this act.

Passed by the Senate February 12, 2014.

Passed by the House March 11, 2014.

Approved by the Governor March 28, 2014, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 31, 2014.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 1, Substitute Senate Bill No. 6129 entitled:

"AN ACT Relating to paraeducator development."

This legislation directs the Public Educators Standards Board to convene a workgroup to design minimum employment standards, professional development, and an articulated career ladder leading to certification for paraeducators. It also requires the state's community and technical colleges to incorporate cultural competency training into their paraeducator training programs and to these candidates the opportunity to earn transferrable credits.

Section 1 is an intent section that discusses various experiences of school paraeducators, and is not necessary to interpret or implement the substantive provisions of the bill.

For these reasons I have vetoed Section 1 of Substitute Senate Bill No. 6129.

With the exception of Section 1, Substitute Senate Bill No. 6129 is approved."

## CHAPTER 137

[Senate Bill 6180]

### PROPERTY TAXES—FOREST AND OPEN SPACE TIMBER LANDS—CONSOLIDATION

AN ACT Relating to consolidating designated forest lands and open space timber lands for ease of administration; amending RCW 84.33.035, 84.33.130, 84.33.140, 84.33.145, 84.34.030, 84.34.041, 84.34.070, 84.34.330, 84.34.340, and 84.34.370; and adding a new section to chapter 84.34 RCW.

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

**Sec. 1.** RCW 84.33.035 and 2011 c 101 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 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 must 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) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a timber growing and harvesting operation, is considered contiguous. Solely for the purposes of this subsection (4), "same ownership" has the same meaning as in RCW 84.34.020(6).

(5) "Forest land" is synonymous with "designated forest land" and means any parcel of land that is ((~~twenty~~) five) or more acres or multiple parcels of land that are contiguous and total ((~~twenty~~) five) 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.

(6) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested must 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.

(7) "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.

(8) "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.

(9) "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.

(10) "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.

(11) "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 benefitted by improvements relating to the districts.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091. However, for timber harvested from public land and sold under a competitive bidding process, stumpage value means 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 is the fair market value of the other consideration. If the other consideration is permanent roads, the value of the roads must be the appraised value as appraised by the seller.

(18) "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.

(19) "Timber assessed value" for a county means 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 multiplied by 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 must use the stumpage value of timber harvested during the most recent four calendar quarters for which the information is available. The department must calculate the timber assessed value for each county before October 1st of each year.

(20) "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 RCW 84.33.089 and the average assessed value per acre of private forest land in the county.

(21) "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))~~ may include:

- (a) A legal description of the forest land;
- (b) A statement that the forest land is held in contiguous ownership of ~~((twenty))~~ five 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 84.33.130 and 2003 c 170 s 4 are each amended to read as follows:

(1)~~(a)~~(i) Notwithstanding any other provision of law, lands that were assessed as classified forest land before July 22, 2001, ~~((shall be))~~ or as timber land under chapter 84.34 RCW before the merger date adopted by the county under section 5 of this act, are designated forest land for the purposes of this chapter.

~~(ii)~~ (ii) The owners of ~~((previously classified forest))~~ land ~~((shall))~~ subject to the requirements of (a)(i) of this subsection are not ((be)) required to apply for designation under this chapter. ~~((As of July 22, 2001,))~~ The land and timber on such land ((shall)) must be assessed and taxed in accordance with the provisions of this chapter as of the date the land is designated forest land under (a)(i) of this subsection.

(b) If a county legislative authority opts under section 5 of this act to merge its timber land classification with the designated forest land program of the county, the following provisions apply beginning on the adopted merger date:

(i) The date the property was classified as timber land is considered to be the date the property was designated as forest land under this chapter:

(ii) The county assessor must notify each owner of timber land of the merger by certified mail; and

(iii) For any forest land subject to the provisions of (b)(i) of this subsection that is then removed from designation, only compensating tax will be collected as a result of the removal in accordance with RCW 84.33.140(12), unless otherwise provided by law.

(2) An owner of land desiring that it be designated as forest land and valued under RCW 84.33.140 as of January 1st of any year ~~((shall))~~ must submit an application to the assessor of the county in which the land is located before January 1st of that year. The application ~~((shall))~~ must be accompanied by a reasonable processing fee when the county legislative authority has established the requirement for such a fee.

(3) No application of designation is required when publicly owned forest land is exchanged for privately owned forest land designated under this chapter. The land exchanged and received by an owner subject to ad valorem taxation

~~((shall be))~~ is automatically granted designation under this chapter if the following conditions are met:

- (a) The land will be used to grow and harvest timber; and
- (b) The owner of the land submits a document to the assessor's office that explains the details of the forest land exchange within sixty days of the closing date of the exchange. However, if the owner fails to submit information regarding the exchange by the end of this sixty-day period, the owner must file an application for designation as forest land under this chapter and the regular application process will be followed.
- (4) The application (~~((shall))~~ must be made upon forms prepared by the department and supplied by the assessor, and (~~((shall))~~ must include the following:
  - (a) A legal description of, or assessor's parcel numbers for, all land the applicant desires to be designated as forest land;
  - (b) The date or dates of acquisition of the land;
  - (c) A brief description of the timber on the land, or if the timber has been harvested, the owner's plan for restocking;
  - (d) A copy of the timber management plan, if one exists, for the land prepared by a trained forester or any other person with adequate knowledge of timber management practices;
  - (e) If a timber management plan exists, an explanation of the nature and extent to which the management plan has been implemented;
  - (f) Whether the land is used for grazing;
  - (g) Whether the land has been subdivided or a plat has been filed with respect to the land;
  - (h) Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW;
  - (i) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;
  - (j) Whether the land is subject to a lease, option, or other right that permits it to be used for any purpose other than growing and harvesting timber;
  - (k) A summary of the past experience and activity of the applicant in growing and harvesting timber;
  - (l) A summary of current and continuing activity of the applicant in growing and harvesting timber;
  - (m) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be designated as forest land;
  - (n) An affirmation that the statements contained in the application are true and that the land described in the application meets the definition of forest land in RCW 84.33.035; and
  - (o) A description and/or drawing showing what areas of land for which designation is sought are used for incidental uses compatible with the definition of forest land in RCW 84.33.035.
- (5) The assessor (~~((shall))~~ must afford the applicant an opportunity to be heard if the applicant so requests.
- (6) The assessor (~~((shall))~~ must act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily

being determinative, except that the application may be denied for one of the following reasons, without regard to other items:

(a) The land does not contain a "merchantable stand of timber" as defined in chapter 76.09 RCW and applicable rules. This reason (~~(shall not)~~) alone (~~(be)~~) is not sufficient to deny the application (i) if the land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or a longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within the land do not meet the minimum standards due to rock outcroppings, swamps, unproductive soil or other natural conditions;

(b) The applicant, with respect to the land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line. However, if the assessor determines that a higher and better use exists for the land but this use would not be permitted or economically feasible by virtue of any federal, state, or local law or regulation, the land (~~(shall)~~) must be assessed and valued under RCW 84.33.140 without being designated as forest land.

(7) The application (~~(shall be)~~) is deemed to have been approved unless, prior to (~~(May)~~) July 1st of the year after the application was mailed or delivered to the assessor, the assessor notifies the applicant in writing of the extent to which the application is denied.

(8) An owner who receives notice that his or her application has been denied, in whole or in part, may appeal the denial to the county board of equalization in accordance with the provisions of RCW 84.40.038.

**Sec. 3.** RCW 84.33.140 and 2013 2nd sp.s. c 11 s 13 are each amended to read as follows:

(1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation must be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor must list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor must compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land are as follows:

| LAND GRADE | OPERABILITY CLASS | VALUES PER ACRE |
|------------|-------------------|-----------------|
|            | 1                 | \$234           |
| 1          | 2                 | 229             |
|            | 3                 | 217             |

|   |   |     |
|---|---|-----|
|   | 4 | 157 |
|   | 1 | 198 |
| 2 | 2 | 190 |
|   | 3 | 183 |
|   | 4 | 132 |
|   | 1 | 154 |
| 3 | 2 | 149 |
|   | 3 | 148 |
|   | 4 | 113 |
|   | 1 | 117 |
| 4 | 2 | 114 |
|   | 3 | 113 |
|   | 4 | 86  |
|   | 1 | 85  |
| 5 | 2 | 78  |
|   | 3 | 77  |
|   | 4 | 52  |
|   | 1 | 43  |
| 6 | 2 | 39  |
|   | 3 | 39  |
|   | 4 | 37  |
|   | 1 | 21  |
| 7 | 2 | 21  |
|   | 3 | 20  |
|   | 4 | 20  |
| 8 |   | 1   |

(3) On or before December 31, 2001, the department must adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and must certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department must:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and



(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section must be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment must be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values must be successively one year more recent.

(5) Land graded, assessed, and valued as forest land must continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice of request to withdraw land classified under RCW 84.34.020(3) within two years before the date of the merger under section 5 of this act. Land previously classified under chapter 84.34 RCW will be removed under the provisions of this chapter when two assessment years have passed following receipt of the notice as described in RCW 84.34.070(1);

(b) Receipt of notice from the owner to remove the designation;

~~((b))~~ (c) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

~~((c))~~ (d) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, does not, by itself, result in removal of designation. The signed notice of continuance must be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section are due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

~~((d))~~ (e) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land may not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient must annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent

to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land may not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor has the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; ~~((e))~~

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection ~~(5)((e))~~ (d) of this section, is signed; or

(c) The assessor has reason to believe that forest land sized less than twenty acres is no longer primarily devoted to and used for growing and harvesting timber. The assessor may require a timber management plan to assist with determining continuing eligibility as designated forest land.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through ~~((e))~~ (d) of this section, the removal applies only to the land affected. If land is removed from designation because of subsection ~~(5)((e))~~ (e) of this section, the removal applies only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation must immediately be made upon the assessment and tax rolls. The assessor must revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value

before and after the removal of designation must be listed. Taxes based on the value of the land as forest land are assessed and payable up until the date of removal and taxes based on the true and fair value of the land are assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)~~((e))~~(d), (13), or (14) of this section, a compensating tax is imposed on land removed from designation as forest land. The compensating tax is due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor must compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax is equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, becomes a lien on the land, which attaches at the time the land is removed from designation as forest land and has priority and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date will thereupon become delinquent. From the date of delinquency until paid, interest is charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. At such time as the

land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section is imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For purposes of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax is imposed upon the current owner.

**Sec. 4.** RCW 84.33.145 and 2012 c 170 s 2 are each amended to read as follows:

(1) If no later than thirty days after removal of designation under this chapter the owner applies for classification under:

(a) RCW 84.34.020(1)(~~(-2), or (3), then~~);

(b) RCW 84.34.020(2); or

(c) RCW 84.34.020(3), unless the timber land classification and designated forest land program are merged under section 5 of this act, then, for the purposes of (a), (b), or (c) of this subsection, the designated forest land may not be considered removed from designation for purposes of the compensating tax under RCW 84.33.140 until the application for current use classification under chapter 84.34 RCW is denied or the property is removed from classification under RCW 84.34.108.

(2) Upon removal of classification under RCW 84.34.108, the amount of compensating tax due under this chapter is equal to:

(a) The difference, if any, between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed valuation of the land when removed from classification under RCW 84.34.108 multiplied by the dollar rate of the last levy extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was designated under this chapter, if the total number of years the land was designated under this chapter and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was designated under this chapter and classified under chapter 84.34 RCW is at least ten.

~~((2))~~ (3) Nothing in this section authorizes the continued designation under this chapter or defers or reduces the compensating tax imposed upon forest land not transferred to classification under subsection (1) of this section ~~((which))~~ that does not meet the definition of forest land under RCW 84.33.035. Nothing in this section affects the additional tax imposed under RCW 84.34.108.

~~((3))~~ (4) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, no amount of compensating tax is due under this section if the removal from classification under RCW 84.34.108 results from a transfer of property described in RCW 84.34.108(6).

NEW SECTION. Sec. 5. A new section is added to chapter 84.34 RCW to read as follows:

(1) A county legislative authority may opt to merge its timber land classification with its designated forest land program. To merge the programs, the authority must enact an ordinance that:

(a) Terminates the timber land classification; and

(b) Declares that the land that had been classified as timber land is designated forest land under chapter 84.33 RCW.

(2) After a county timber land program is terminated:

(a) Land that had been classified as timber land within the county is deemed to be designated forest land under the provisions of RCW 84.33.130(1) and is no longer considered to be classified timber land for the purposes of this chapter; and

(b) Any agreement prepared by the granting authority when an application was approved classifying land as timber land is terminated and no longer in effect.

(3) A county must notify the department after taking action under this section. The department must maintain a list of all counties that have provided this notice on their agency internet web site.

**Sec. 6.** RCW 84.34.030 and 1989 c 378 s 10 are each amended to read as follows:

(1) An owner of ((agricultural)) land desiring current use classification under ((subsection (2) of)) RCW 84.34.020 ((shall)) **must** make application **as follows**:

(a) Application for classification under RCW 84.34.020(2) must be made to the county assessor upon forms prepared by the state department of revenue and supplied by the county assessor. ((An owner of open space or timber land desiring current use))

(b) Application for classification under ((subsections (1) and (3) of)):

(i) RCW 84.34.020 ((shall make application)) (1); or

(ii) RCW 84.34.020(3), unless the timber land classification and designated forest land program are merged under section 5 of this act must be made, for (b)(i) or (ii) of this subsection, to the county legislative authority upon forms prepared by the state department of revenue and supplied by the county assessor.

(2) The application ((shall)) **must** be accompanied by a reasonable processing fee if ((such)) a processing fee is established by the city or county legislative authority. ((Said)) **The** application ((shall)) **may** require only such information reasonably necessary to properly classify an area of land under this chapter with a notarized verification of the truth thereof and ((shall)) **must** include a statement that the applicant is aware of the potential tax liability involved when ((such)) **the** land ceases to be ((designated)) **classified** as open space, farm and agricultural or timber land. Applications must be made during the calendar year preceding that in which ((such)) classification is to begin.

(3) The assessor ((shall)) **must** make necessary information, including copies of this chapter and applicable regulations, readily available to interested parties, and ((shall)) **must** render reasonable assistance to such parties upon request.

**Sec. 7.** RCW 84.34.041 and 2009 c 350 s 14 are each amended to read as follows:

(1) An application for current use classification or reclassification under RCW 84.34.020(3) ((shall)) **must** be made to the county legislative authority.

((+)) The application ((shall)) **must** be made upon forms prepared by the department of revenue and supplied by the granting authority and ((shall)) **must** include the following elements that constitute a timber management plan:

(a) A legal description of, or assessor's parcel numbers for, all land the applicant desires to be classified as timber land;

(b) The date or dates of acquisition of the land;

(c) A brief description of the timber on the land, or if the timber has been harvested, the owner's plan for restocking;

(d) Whether there is a forest management plan for the land;

(e) If so, the nature and extent of implementation of the plan;

(f) Whether the land is used for grazing;

(g) Whether the land has been subdivided or a plat filed with respect to the land;

(h) Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(i) Whether the land is subject to forest fire protection assessments pursuant to RCW 76.04.610;

(j) Whether the land is subject to a lease, option, or other right that permits it to be used for a purpose other than growing and harvesting timber;

(k) A summary of the past experience and activity of the applicant in growing and harvesting timber;

(l) A summary of current and continuing activity of the applicant in growing and harvesting timber;

(m) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be classified as timber land.

(2) An application made for classification of land under RCW 84.34.020(3) (~~shall~~) must be acted upon after a public hearing and after notice of the hearing is given by one publication in a newspaper of general circulation in the area at least ten days before the hearing. Application for classification of land in an incorporated area (~~shall~~) must be acted upon by: (a) A granting authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located in a meeting where members may be physically absent but participating through telephonic connection; or (b) separate affirmative acts by both the county and city legislative bodies where both bodies affirm the entirety of an application without modification or both bodies affirm an application with identical modifications.

(3) The granting authority (~~shall~~) must act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:

(a) The land does not contain a stand of timber as defined in chapter 76.09 RCW and applicable rules, except this reason (~~shall not~~) alone (~~be~~) is not sufficient to deny the application (i) if the land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or the longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions;

(b) The applicant, with respect to the land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line.

(4)(a) The timber management plan must be filed with the county legislative authority either: (~~(a)~~) (i) When an application for classification under this chapter is submitted; (~~(b)~~) (ii) when a sale or transfer of timber land occurs and a notice of continuance is signed; or (~~(c)~~) (iii) within sixty days of the date the

application for reclassification under this chapter or from designated forest land is received. The application for reclassification (~~((shall))~~) must be accepted, but (~~((shall))~~) may not be processed until the timber management plan is received. If the timber management plan is not received within sixty days of the date the application for reclassification is received, the application for reclassification (~~((shall))~~) must be denied.

(b) If circumstances require it, the county assessor may allow in writing an extension of time for submitting a timber management plan when an application for classification or reclassification or notice of continuance is filed. When the assessor approves an extension of time for filing the timber management plan, the county legislative authority may delay processing an application until the timber management plan is received. If the timber management plan is not received by the date set by the assessor, the application or the notice of continuance (~~((shall))~~) must be denied.

(c) The granting authority may approve the application with respect to only part of the land that is described in the application, and if any part of the application is denied, the applicant may withdraw the entire application. The granting authority, in approving in part or whole an application for land classified pursuant to RCW 84.34.020(3), may also require that certain conditions be met.

(d) Granting or denial of an application for current use classification is a legislative determination and (~~((shall be))~~) is reviewable only for arbitrary and capricious actions. The granting authority may not require the granting of easements for land classified pursuant to RCW 84.34.020(3).

(e) The granting authority (~~((shall))~~) must approve or disapprove an application made under this section within six months following the date the application is received.

(5) No application may be approved under this section, and land may not otherwise be classified or reclassified under RCW 84.34.020(3), if the timber land classification and designated forest land program are merged under section 5 of this act.

**Sec. 8.** RCW 84.34.070 and 1992 c 69 s 10 are each amended to read as follows:

(1) When land has once been classified under this chapter, it (~~((shall))~~) must remain under such classification and (~~((shall))~~) must not be applied to other use except as provided by subsection (2) of this section for at least ten years from the date of classification (~~((and shall))~~). It must continue under such classification until and unless withdrawn from classification after notice of request for withdrawal (~~((shall be))~~) is made by the owner. During any year after eight years of the initial ten-year classification period have elapsed, notice of request for withdrawal of all or a portion of the land may be given by the owner to the assessor or assessors of the county or counties in which (~~((such))~~) the land is situated. (~~((In the event that))~~) If a portion of a parcel is removed from classification, the remaining portion must meet the same requirements as did the entire parcel when (~~((such))~~) the land was originally granted classification (~~((pursuant to))~~) under this chapter unless the remaining parcel has different income criteria. Within seven days the assessor (~~((shall))~~) must transmit one copy of (~~((such))~~) the notice to the legislative body (~~((which))~~) that originally approved the application. The assessor or assessors, as the case may be, (~~((shall))~~) must,



when two assessment years have elapsed following the date of receipt of ~~((such))~~ the notice, withdraw ~~((such))~~ the land from ~~((such))~~ the classification and the land ~~((shall be))~~ is subject to the additional tax and applicable interest due under RCW 84.34.108. Agreement to tax according to use ~~((shall))~~ is not ~~((be))~~ considered to be a contract and can be abrogated at any time by the legislature in which event no additional tax or penalty ~~((shall))~~ may be imposed.

(2)(a) The following reclassifications are not considered withdrawals or removals and are not subject to additional tax under RCW 84.34.108:

~~((+))~~ (i) Reclassification between lands under RCW 84.34.020 (2) and (3);  
~~((+))~~ (ii) Reclassification of land classified under RCW 84.34.020 (2) or (3) or designated under chapter 84.33 RCW to open space land under RCW 84.34.020(1);

~~((+))~~ (iii) Reclassification of land classified under RCW 84.34.020 (2) or (3) to forest land ~~((classified))~~ designated under chapter 84.33 RCW; and

~~((+))~~ (iv) Reclassification of land classified as open space land under RCW 84.34.020(1)(c) and reclassified to farm and agricultural land under RCW 84.34.020(2) if the land had been previously classified as farm and agricultural land under RCW 84.34.020(2).

(b) Designation as forest land under RCW 84.33.130(1) as a result of a merger adopted under section 5 of this act is not considered a withdrawal or removal and is not subject to additional tax under RCW 84.34.108.

(c) Any owner of land classified under RCW 84.34.020(3) who has provided the assessor with a notice of request to withdrawal under subsection (1) of this section within two years of the date of merger as described in section 5 of this act, will have their land removed as designated forest land under the provisions of chapter 84.33 RCW when two assessment years have elapsed following the receipt of this notice.

(3) Applications for reclassification ~~((shall be))~~ are subject to applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and chapter 84.33 RCW.

(4) The income criteria for land classified under RCW 84.34.020(2) (b) and (c) may be deferred for land being reclassified from land classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into RCW 84.34.020(2) (b) or (c) for a period of up to five years from the date of reclassification.

**Sec. 9.** RCW 84.34.330 and 1992 c 52 s 17 are each amended to read as follows:

(1) Whenever farm and agricultural land or timber land has once been exempted from special benefit assessments ~~((pursuant to))~~ under RCW 84.34.320, and except as provided in subsection (2) of this section, any withdrawal or removal from classification or change in use from farm and agricultural land or timber land under chapter 84.34 RCW ~~((shall))~~ result in the following:

~~((+))~~ (a) If the bonds used to fund the improvement in the local improvement district have not been completely retired, ~~((such))~~ the land ~~((shall))~~ immediately becomes liable for: ~~((+))~~ (i) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; plus ~~((+))~~ (ii) interest on the amount determined in ~~((+))~~(a)(i) of this ~~((section))~~ subsection (1), compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity ~~((which))~~ that created the local improvement district as provided in RCW 84.34.320 to the time the

~~((owner withdraws such land))~~ land is withdrawn or removed from the exemption category provided by this chapter~~((-or))~~.

~~((2))~~ (b) If the bonds used to fund the improvement in the local improvement district have been completely retired, ~~((such))~~ the land ~~((shall))~~ immediately becomes liable for: ~~((a))~~ (i) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; plus ~~((b))~~ (ii) interest on the amount determined in ~~((2)(a))~~ (b)(i) of this ~~((section))~~ subsection (1) compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity ~~((which))~~ that created the local improvement district as provided in RCW 84.34.320, to the time the bonds used to fund the improvement have been retired; plus ~~((e))~~ (iii) interest on the total amount determined in ~~((2)(a))~~ (b)(i) and ~~((b))~~ (ii) of this ~~((section))~~ subsection (1) at a simple per annum rate equal to the average rate of inflation from the time the bonds used to fund the improvement have been retired to the time the ~~((owner withdraws such lands))~~ land is withdrawn or removed from the exemption category provided by this chapter.

~~((3))~~ (c) The amount payable ~~((pursuant to))~~ under this section ~~((shall))~~ becomes due on the date ~~((such))~~ the land is withdrawn or removed from its ~~((current use))~~ farm and agricultural land or timber land classification and ~~((shall be))~~ is a lien on the land prior and superior to any other lien whatsoever except for the lien for general taxes, and ~~((shall be))~~ is enforceable in the same manner as the collection of special benefit assessments are enforced by that local government.

(2) Designation as forest land under RCW 84.33.130(1) as a result of a merger of programs adopted under section 5 of this act is not considered a withdrawal, removal, or a change in use under this section.

**Sec. 10.** RCW 84.34.340 and 1992 c 52 s 18 are each amended to read as follows:

(1) Whenever farm and agricultural land or timber land is withdrawn or removed from its current use classification as farm and agricultural land or timber land, except as provided in subsection (2) of this section, the county assessor of the county in which ~~((such))~~ the land is located ~~((shall forthwith))~~ must give written notice of ~~((such))~~ the withdrawal or removal to the local government or its successor ~~((which had))~~ that filed with the assessor the notice required by RCW 84.34.320. Upon receipt of the notice from the assessor, the local government ~~((shall))~~ must mail a written statement to the owner of ~~((such))~~ the land for the amounts payable as provided in RCW 84.34.330. ~~((Such))~~ The amounts due ~~((shall be))~~ are delinquent if not paid within one hundred ~~((and))~~ eighty days after the date of mailing of the statement, and ~~((shall be))~~ are subject to the same interest, penalties, lien priority, and enforcement procedures that are applicable to delinquent assessments on the assessment roll from which that land had been exempted, except that the rate of interest charged ~~((shall))~~ may not exceed the rate provided in RCW 84.34.330.

(2) Designation as forest land under RCW 84.33.130(1) as a result of a merger adopted under section 5 of this act is not considered a withdrawal or removal under this section.

**Sec. 11.** RCW 84.34.370 and 1992 c 52 s 20 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, whenever a portion of a parcel of land ((which)) that was classified as farm and agricultural or timber land ((pursuant to)) under this chapter is withdrawn or removed from classification or there is a change in use, and ((such)) the land has been exempted from any benefit assessments ((pursuant to)) under RCW 84.34.320, the previously exempt benefit assessments ((shall)) become due on only that portion of the land ((which)) that is withdrawn, removed, or changed.

(2) Designation as forest land under RCW 84.33.130(1) as a result of a merger of programs adopted under section 5 of this act is not considered a withdrawal, removal, or a change in use under this section.

Passed by the Senate February 17, 2014.

Passed by the House March 12, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 138

[Substitute Senate Bill 6283]

### PHLEBOTOMISTS

AN ACT Relating to clarifying the practice of a phlebotomist; and amending RCW 18.360.050.

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

**Sec. 1.** RCW 18.360.050 and 2013 c 128 s 3 are each amended to read as follows:

(1) A medical assistant-certified may perform the following duties delegated by, and under the supervision of, a health care practitioner:

(a) Fundamental procedures:

(i) Wrapping items for autoclaving;

(ii) Procedures for sterilizing equipment and instruments;

(iii) Disposing of biohazardous materials; and

(iv) Practicing standard precautions.

(b) Clinical procedures:

(i) Performing aseptic procedures in a setting other than a hospital licensed under chapter 70.41 RCW;

(ii) Preparing of and assisting in sterile procedures in a setting other than a hospital under chapter 70.41 RCW;

(iii) Taking vital signs;

(iv) Preparing patients for examination;

(v) Capillary blood withdrawal, venipuncture, and intradermal, subcutaneous, and intramuscular injections; and

(vi) Observing and reporting patients' signs or symptoms.

(c) Specimen collection:

(i) Capillary puncture and venipuncture;

(ii) Obtaining specimens for microbiological testing; and

(iii) Instructing patients in proper technique to collect urine and fecal specimens.

(d) Diagnostic testing:

(i) Electrocardiography;

(ii) Respiratory testing; and

(iii)(A) Tests waived under the federal clinical laboratory improvement amendments program on July 1, 2013. The department shall periodically update the tests authorized under this subsection (1)(d) based on changes made by the federal clinical laboratory improvement amendments program; and

(B) Moderate complexity tests if the medical assistant-certified meets standards for personnel qualifications and responsibilities in compliance with federal regulation for nonwaived testing.

(e) Patient care:

(i) Telephone and in-person screening limited to intake and gathering of information without requiring the exercise of judgment based on clinical knowledge;

(ii) Obtaining vital signs;

(iii) Obtaining and recording patient history;

(iv) Preparing and maintaining examination and treatment areas;

(v) Preparing patients for, and assisting with, routine and specialty examinations, procedures, treatments, and minor office surgeries;

(vi) Maintaining medication and immunization records; and

(vii) Screening and following up on test results as directed by a health care practitioner.

(f)(i) Administering medications. A medical assistant-certified may only administer medications if the drugs are:

(A) Administered only by unit or single dosage, or by a dosage calculated and verified by a health care practitioner. For purposes of this section, a combination or multidose vaccine shall be considered a unit dose;

(B) Limited to legend drugs, vaccines, and Schedule III-V controlled substances as authorized by a health care practitioner under the scope of his or her license and consistent with rules adopted by the secretary under (f)(ii) of this subsection; and

(C) Administered pursuant to a written order from a health care practitioner.

(ii) A medical assistant-certified may not administer experimental drugs or chemotherapy agents. The secretary may, by rule, further limit the drugs that may be administered under this subsection (1)(f). The rules adopted under this subsection must limit the drugs based on risk, class, or route.

(g) Intravenous injections. A medical assistant-certified may administer intravenous injections for diagnostic or therapeutic agents under the direct visual supervision of a health care practitioner if the medical assistant-certified meets minimum standards established by the secretary in rule. The minimum standards must be substantially similar to the qualifications for category D and F health care assistants as they exist on July 1, 2013.

(h) Urethral catheterization when appropriately trained.

(2) A medical assistant-hemodialysis technician may perform hemodialysis when delegated and supervised by a health care practitioner. A medical assistant-hemodialysis technician may also administer drugs and oxygen to a patient when delegated and supervised by a health care practitioner and pursuant to rules adopted by the secretary.

(3) A medical assistant-phlebotomist may perform;

(a) Capillary, venous, or arterial invasive procedures for blood withdrawal when delegated and supervised by a health care practitioner and pursuant to rules adopted by the secretary;

(b) Tests waived under the federal clinical laboratory improvement amendments program on July 1, 2013. The department shall periodically update the tests authorized under this section based on changes made by the federal clinical laboratory improvement amendments program;

(c) Moderate and high complexity tests if the medical assistant-phlebotomist meets standards for personnel qualifications and responsibilities in compliance with federal regulation for nonwaived testing; and

(d) Electrocardiograms.

(4) A medical assistant-registered may perform the following duties delegated by, and under the supervision of, a health care practitioner:

(a) Fundamental procedures:

- (i) Wrapping items for autoclaving;
- (ii) Procedures for sterilizing equipment and instruments;
- (iii) Disposing of biohazardous materials; and
- (iv) Practicing standard precautions.

(b) Clinical procedures:

- (i) Preparing for sterile procedures;
- (ii) Taking vital signs;
- (iii) Preparing patients for examination; and
- (iv) Observing and reporting patients' signs or symptoms.

(c) Specimen collection:

- (i) Obtaining specimens for microbiological testing; and
- (ii) Instructing patients in proper technique to collect urine and fecal specimens.

(d) Patient care:

- (i) Telephone and in-person screening limited to intake and gathering of information without requiring the exercise of judgment based on clinical knowledge;

(ii) Obtaining vital signs;

(iii) Obtaining and recording patient history;

(iv) Preparing and maintaining examination and treatment areas;

(v) Preparing patients for, and assisting with, routine and specialty examinations, procedures, treatments, and minor office surgeries utilizing no more than local anesthetic. The department may, by rule, prohibit duties authorized under this subsection (4)(d)(v) if performance of those duties by a medical assistant-registered would pose an unreasonable risk to patient safety;

(vi) Maintaining medication and immunization records; and

(vii) Screening and following up on test results as directed by a health care practitioner.

(e)(i) Tests waived under the federal clinical laboratory improvement amendments program on July 1, 2013. The department shall periodically update the tests authorized under subsection (1)(d) of this section based on changes made by the federal clinical laboratory improvement amendments program.

(ii) Moderate complexity tests if the medical assistant-registered meets standards for personnel qualifications and responsibilities in compliance with federal regulation for nonwaived testing.

(f) Administering eye drops, topical ointments, and vaccines, including combination or multidose vaccines.

(g) Urethral catheterization when appropriately trained.

Passed by the Senate March 13, 2014.

Passed by the House March 13, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 139

[Substitute Senate Bill 6387]

### PERSONS WITH DEVELOPMENTAL DISABILITIES—SERVICES AVAILABILITY

AN ACT Relating to reducing the number of individuals with developmental disabilities who have requested a service but the provision of a specific service would exceed program capacity; amending RCW 71A.10.020, 71A.16.050, 18.88B.041, 74.39A.076, and 74.39A.341; and creating new sections.

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

**NEW SECTION. Sec. 1.** In conjunction with recent findings from the Washington state auditor's office, the legislature finds that there are thousands of state citizens who have been determined eligible for services through the department of social and health services' developmental disability administration. For those who have asked for help but are waiting for services, families may experience financial or emotional hardships. The legislature intends to clarify and make transparent the process for accessing publicly funded services for individuals with developmental disabilities and their families. The legislature intends to significantly reduce the number of eligible individuals who are waiting for services by funding additional slots and by implementing new programs that better utilize federal funding partnerships.

**Sec. 2.** RCW 71A.10.020 and 2011 1st sp.s. c 30 s 3 are each amended to read as follows:

As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Assessment" means an evaluation is provided by the department to determine:

(a) If the individual meets functional and financial criteria for medicaid services; and

(b) The individual's support needs for service determination.

(2) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

~~((2))~~ (3) "Crisis stabilization services" means services provided to persons with developmental disabilities who are experiencing behaviors that jeopardize the safety and stability of their current living situation. Crisis stabilization services include:

(a) Temporary intensive services and supports, typically not to exceed sixty days, to prevent psychiatric hospitalization, institutional placement, or other out-of-home placement; and

(b) Services designed to stabilize the person and strengthen their current living situation so the person may continue to safely reside in the community during and beyond the crisis period.

~~((3))~~ (4) "Department" means the department of social and health services.

~~((4))~~ (5) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions, and notify the legislature of this action.

~~((5))~~ (6) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

~~((6))~~ (7) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

~~((7))~~ (8) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

~~((8))~~ (9) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

~~((9))~~ (10) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

~~((10))~~ (11) "Respite services" means relief for families and other caregivers of people with disabilities, typically not to exceed ninety days, to include both in-home and out-of-home respite care on an hourly and daily basis, including twenty-four hour care for several consecutive days. Respite care workers provide supervision, companionship, and personal care services temporarily replacing those provided by the primary caregiver of the person with disabilities. Respite care may include other services needed by the client, including medical care which must be provided by a licensed health care practitioner.

~~((11))~~ (12) "Secretary" means the secretary of social and health services or the secretary's designee.

~~((12))~~ (13) "Service" or "services" means services provided by state or local government to carry out this title.

~~((13))~~ (14) "State-operated living alternative" means programs for community residential services which may include assistance with activities of daily living, behavioral, habilitative, interpersonal, protective, medical, nursing, and mobility supports to individuals who have been assessed by the department as meeting state and federal requirements for eligibility in home and community-based waiver programs for individuals with developmental

disabilities. State-operated living alternatives are operated and staffed with state employees.

~~((14))~~ (15) "Supported living" means community residential services and housing which may include assistance with activities of daily living, behavioral, habilitative, interpersonal, protective, medical, nursing, and mobility supports provided to individuals with disabilities who have been assessed by the department as meeting state and federal requirements for eligibility in home and community-based waiver programs for individuals with developmental disabilities. Supported living services are provided under contracts with private agencies or with individuals who are not state employees.

~~((15))~~ (16) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biennially budgeted capacity.

(17) "Service request list" means a list of eligible persons who have received an assessment for service determination and their assessment shows that they meet the eligibility requirements for the requested service but were denied access due to funding limits.

**Sec. 3.** RCW 71A.16.050 and 1988 c 176 s 405 are each amended to read as follows:

The determination made under this chapter is only as to whether a person is eligible for services. After the secretary has determined under this chapter that a person is eligible for services, the individual may request an assessment for eligibility for medicaid programs and specific services administered by the developmental disabilities administration. The secretary shall make a determination as to what services are appropriate for the person. The secretary shall prioritize services to medicaid eligible clients. Services may be made available to nonmedicaid eligible clients based on available funding. Services available through the state medicaid plan must be provided to those individuals who meet the eligibility criteria. The department shall establish and maintain a service request list database for individuals who are found to be eligible and have an assessed and unmet need for programs and services offered under a home and community-based services waiver, but the provision of a specific service would exceed the biennially budgeted capacity.

**NEW SECTION. Sec. 4.** The department of social and health services shall develop and implement a medicaid program to replace the individual and family services program for medicaid-eligible clients no later than May 1, 2015. The new medicaid program must offer services that closely resemble the services offered in fiscal year 2014 through the individual and family services program. To the extent possible, the department shall expand the client caseload on the medicaid program replacing the individual and family services program. The department is authorized in fiscal year 2015 to use general fund—state dollars previously provided for the individual and family services program to cover the cost of increasing the number of clients served in the new medicaid program.

**NEW SECTION. Sec. 5.** By June 30, 2017, if additional federal funds through the community first choice option are attained, then the department of social and health services shall increase the number served on the medicaid program replacing the individual and family services program by at least four thousand, and increase by at least one thousand clients receiving services on the



home and community-based services basic plus waiver. For both of these programs, the department of social and health services shall expend [expand] the client caseload beginning June 30, 2015.

**Sec. 6.** RCW 18.88B.041 and 2012 c 164 s 302 are each amended to read as follows:

(1) The following long-term care workers are not required to become a certified home care aide pursuant to this chapter:

(a)(i)(A) Registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved training program for certified nursing assistants under chapter 18.88A RCW, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary determines that the circumstances do not require certification.

(B) A person who was initially hired as a long-term care worker prior to January 7, 2012, and who completes all of his or her training requirements in effect as of the date he or she was hired.

(ii) Individuals exempted by (a)(i) of this subsection may obtain certification as a home care aide without fulfilling the training requirements in RCW 74.39A.074(1)(d)(ii) but must successfully complete a certification examination pursuant to RCW 18.88B.031.

(b) All long-term care workers employed by community residential service businesses.

(c) An individual provider caring only for his or her biological, step, or adoptive child or parent.

(d) ~~((Prior to))~~ Until July 1, ((2014)) 2016, a person ~~((hired))~~ working as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(e) Until July 1, 2016, a person working as an individual provider who only provides respite services and works less than three hundred hours in any calendar year.

(2) A long-term care worker exempted by this section from the training requirements contained in RCW 74.39A.074 may not be prohibited from enrolling in training pursuant to that section.

(3) The department shall adopt rules to implement this section.

**Sec. 7.** RCW 74.39A.076 and 2012 c 164 s 402 are each amended to read as follows:

(1) Beginning January 7, 2012, except for long-term care workers exempt from certification under RCW 18.88B.041(1)(a):

(a) A biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days after becoming an individual provider or within one hundred twenty calendar days after March 29, 2012, whichever is later.

(b) Individual providers identified in (b)(i) ~~((and)),~~ (ii), and (iii) of this subsection must complete thirty-five hours of training within the first one hundred twenty days after becoming an individual provider or within one

hundred twenty calendar days after March 29, 2012, whichever is later. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(i) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by (a) of this subsection; ~~((and))~~

(ii) ~~Until ((January 1, 2014))~~ July 1, 2016, a person ~~((hired))~~ working as an individual provider who provides twenty hours or less of care for one person in any calendar month; and

(iii) Until July 1, 2016, a person working as an individual provider who only provides respite services and works less than three hundred hours in any calendar year.

(2) In computing the time periods in this section, the first day is the date of hire or March 29, 2012, whichever is applicable.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules to implement this section.

**Sec. 8.** RCW 74.39A.341 and 2013 c 259 s 3 are each amended to read as follows:

(1) All long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning July 1, 2012.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 18.88B RCW.

(3) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child;

(b) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW;

(c) Before January 1, 2016, a long-term care worker employed by a community residential service business; ~~((or))~~

~~((Before))~~ Until July 1, ~~((2014))~~ 2016, a person ~~((hired))~~ working as an individual provider who provides twenty hours or less of care for one person in any calendar month; or

(e) Until July 1, 2016, a person working as an individual provider who only provides respite services and works less than three hundred hours in any calendar year.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules to implement subsection (1) of this section.

(7) The department shall adopt rules to implement subsection (2) of this section.

Passed by the Senate March 13, 2014.

Passed by the House March 13, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 140

[Senate Bill 6505]

### MARIJUANA PRODUCTS—TAXES

AN ACT Relating to clarifying that marijuana, useable marijuana, and marijuana-infused products are not agricultural products; amending RCW 82.04.100, 82.04.260, 82.04.260, 82.04.260, 82.04.260, 82.04.330, 82.04.331, 82.04.4266, 82.04.625, 82.08.010, 82.08.020, 82.08.02565, 82.12.02565, 82.08.0257, 82.12.0258, 82.08.0273, 82.08.02745, 82.08.0281, 82.08.0288, 82.12.0283, 82.08.0293, 82.08.820, 82.14.430, 82.16.050, 82.29A.020, 84.36.630, 84.40.030, 82.02.010, 15.13.270, 15.13.270, 15.17.020, 15.49.061, and 20.01.030; reenacting and amending RCW 82.04.213; adding a new section to chapter 84.34 RCW; providing effective dates; providing a contingent effective date; providing expiration dates; and providing a contingent expiration date.

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

**Sec. 1.** RCW 82.04.100 and 2001 c 118 s 1 are each amended to read as follows:

"Extractor" 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, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees other than plantation Christmas trees, or other natural products, or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; ((~~or~~)) persons meeting the definition of farmer under RCW 82.04.213; or persons producing marijuana.

**Sec. 2.** RCW 82.04.213 and 2001 c 118 s 2 and 2001 c 97 s 3 are each reenacted and amended to read as follows:

(1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural

product" does not include marijuana, useable marijuana, or marijuana-infused products, or animals defined as pet animals under RCW 16.70.020.

(2) "Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber.

(3) The terms "agriculture," "farming," "horticulture," "horticultural," and "horticultural product" may not be construed to include or relate to marijuana, useable marijuana, or marijuana-infused products unless the applicable term is explicitly defined to include marijuana, useable marijuana, or marijuana-infused products.

(4) "Marijuana," "useable marijuana," and "marijuana-infused products" have the same meaning as in RCW 69.50.101.

**Sec. 3.** RCW 82.04.260 and 2013 2nd sp.s. c 13 s 202 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business

multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales 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 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to

the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.



(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.365 percent through June 30, 2013, and beginning July 1, 2013, multiplied by the rate of 0.35 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 4.** RCW 82.04.260 and 2013 2nd sp.s. c 13 s 203 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons

the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

- (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
- (ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales 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 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by

the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such

business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 5.** RCW 82.04.260 and 2013 3rd sp.s. c 2 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to

purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to

the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this



state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales 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 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection (11), this subsection (11) does not apply on and after July 1, 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection (11) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850 has been sited outside the state of Washington. This subsection (11)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.365 percent through June 30, 2013, and beginning July 1, 2013, multiplied by the rate of 0.35 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 6.** RCW 82.04.260 and 2013 3rd sp.s. c 2 s 6 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds

derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

- (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
- (ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales 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 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection (11), this subsection (11) does not apply on and after July 1, 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection (11) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850 has been sited outside the state of Washington. This subsection (11)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products;

as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newspaper; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534.

**Sec. 7.** RCW 82.04.330 and 2001 c 118 s 3 are each amended to read as follows:

(1) This chapter (~~(shall)~~) does not apply to any farmer (~~(that sells)~~) in respect to the sale of any agricultural product at wholesale or to any farmer who grows, raises, or produces agricultural products owned by others, such as custom feed operations. This exemption (~~(shall)~~) does not apply to any person selling such products at retail or to any person selling manufactured substances or articles.

(2) This chapter (~~(shall)~~) also does not apply to any persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture with respect to land enrolled in that program.

**Sec. 8.** RCW 82.04.331 and 1998 c 170 s 2 are each amended to read as follows:

(1) This chapter does not apply to amounts received by a person engaging within this state in the business of: (a) Making wholesale sales to farmers of seed conditioned for use in planting and not packaged for retail sale; or (b) conditioning seed for planting owned by others.

(2) For the purposes of this section, "seed" means seed potatoes and all other "agricultural seed" as defined in RCW 15.49.011. "Seed" does not include "flower seeds" or "vegetable seeds" as defined in RCW 15.49.011, or any other seeds or propagative portions of plants used to grow marijuana, ornamental flowers, or (~~(used to grow)~~) any type of bush, moss, fern, shrub, or tree.

**Sec. 9.** RCW 82.04.4266 and 2012 2nd sp.s. c 6 s 201 are each amended to read as follows:

(1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) For purposes of this section, "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products.



(3) A person claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

~~((3))~~ (4) This section expires July 1, 2015.

**Sec. 10.** RCW 82.04.625 and 2007 c 334 s 1 are each amended to read as follows:

(1) This chapter does not apply to any:

(a) Person performing custom farming services for a farmer, when the person performing the custom farming services is: (i) An eligible farmer; or (ii) at least fifty percent owned by an eligible farmer; or

(b) Person performing farm management services, contract labor services, services provided with respect to animals that are agricultural products, or any combination of these services, for a farmer or for a person performing custom farming services, when the person performing the farm management services, contract labor services, services with respect to animals, or any combination of these services, and the farmer or person performing custom farming services are related.

(2) The definitions in this subsection apply throughout this section.

(a)(i) "Custom farming services" means the performance of specific farming operations through the use of any farm machinery or equipment, farm implement, or draft animal, together with an operator, when: (i) The specific farming operation consists of activities directly related to the growing, raising, or producing of any agricultural product to be sold or consumed by a farmer; and (ii) the performance of the specific farming operation is for, and under a contract with, or the direction or supervision of, a farmer. "Custom farming services" does not include the custom application of fertilizers, chemicals, or biologicals, or any services related to the growing, raising, or producing of marijuana.

(ii) For the purposes of this subsection (2)(a), "specific farming operation" includes specific planting, cultivating, or harvesting activities, or similar specific farming operations. The term does not include veterinary services as defined in RCW 18.92.010; farrier, boarding, training, or appraisal services; artificial insemination or stud services, agricultural consulting services; packing or processing of agricultural products; or pumping or other waste disposal services.

(b) "Eligible farmer" means a person who is eligible for an exemption certificate under RCW 82.08.855 at the time that the custom farming services are rendered, regardless of whether the person has applied for an exemption certificate under RCW 82.08.855.

(c) "Farm management services" means the consultative decisions made for the operations of the farm including, but not limited to, determining which crops to plant, the choice and timing of application of fertilizers and chemicals, the horticultural practices to apply, the marketing of crops and livestock, and the care and feeding of animals. "Farm management services" does not include any services related to the growing, raising, or producing of marijuana.

(d) "Related" means having any of the relationships specifically described in section 267(b) (1), (2), and (4) through (13) of the internal revenue code, as amended or renumbered as of January 1, 2007.

**Sec. 11.** RCW 82.08.010 and 2010 c 106 s 210 are each amended to read as follows:

For the purposes of this chapter:

(1)(a)(i) "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, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else 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; and ~~((+))~~ (E) installation charges.

(ii) 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))~~ must 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;

(b) "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, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a retail sale in RCW 82.04.050, 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;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a) "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:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(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) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state," (~~and~~) "within this state," marijuana, useable marijuana, and marijuana-infused products applies equally to the provisions of this chapter;

(7) 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;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(9) The definitions in RCW 82.04.192 apply to this chapter;

(10) For the purposes of the taxes imposed under this chapter and chapter 82.12 RCW, whenever the terms "property" or "personal property" are used, those terms must be construed to include digital goods and digital codes unless:

(a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property;

(b) It is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or

(c) To construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences; and

(11) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(12) The terms "agriculture," "farming," "horticulture," "horticultural," and "horticultural product" may not be construed to include or relate to marijuana, useable marijuana, or marijuana-infused products unless the applicable term is explicitly defined to include marijuana, useable marijuana, or marijuana-infused products.

**Sec. 12.** RCW 82.08.020 and 2011 c 171 s 120 are each amended to read as follows:

(1) There is levied and collected a tax equal to six and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include:

(a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, unless the farm tractor or farm vehicle is for use in the production of marijuana;

(b) Off-road vehicles as defined in RCW 46.04.365(7);

(c) Nonhighway vehicles as defined in RCW 46.09.310(7); and

(d) Snowmobiles as defined in RCW 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

**Sec. 13.** RCW 82.08.02565 and 2011 c 23 s 2 are each amended to read as follows:

(1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(b) Sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department by rule. The seller must retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturer" means a person that qualifies as a manufacturer under RCW 82.04.110. "Manufacturer" also includes a person that prints newspapers or other materials.

(e) "Manufacturing" means only those activities that come within the definition of "to manufacture" in RCW 82.04.120 and are taxed as manufacturing or processing for hire under chapter 82.04 RCW, or would be taxed as such if such activity were conducted in this state or if not for an exemption or deduction. "Manufacturing" also includes printing newspapers or other materials. An activity is not taxed as manufacturing or processing for hire under chapter 82.04 RCW if the activity is within the purview of chapter 82.16 RCW.

(f) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. With respect to the production of class A or exceptional quality biosolids by a wastewater treatment facility, the manufacturing operation begins at the point where class B biosolids undergo additional processing to achieve class A or exceptional quality standards. Notwithstanding anything to the contrary in this section, the term also includes 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. The term does not include the preparation of food products on the premises of a person selling food products at retail.

(g) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(h) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(i) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(j) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes the testing of tangible personal property for use in 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. The term does not include the testing of tangible personal property for use in the production of electricity by a light and power business as defined in RCW 82.16.010 or the

preparation of food products on the premises of a person selling food products at retail.

(3) This section does not apply (a) to sales of machinery and equipment used directly in the manufacturing, research and development, or testing of marijuana, useable marijuana, or marijuana-infused products, or (b) to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

**Sec. 14.** RCW 82.12.02565 and 2003 c 5 s 5 are each amended to read as follows:

(1) The provisions of this chapter ((shall)) do not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to the use by a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(2) This section does not apply to the use of (a) machinery and equipment used directly in the manufacturing, research and development, or testing of marijuana, useable marijuana, or marijuana-infused products, or (b) labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

**Sec. 15.** RCW 82.08.0257 and 2009 c 535 s 511 are each amended to read as follows:

The tax levied by RCW 82.08.020 does not apply to auction sales made by or through auctioneers of personal property (including household goods) that has been used in conducting a farm activity, when the seller thereof is a farmer as defined in RCW 82.04.213 and the sale is held or conducted upon a farm and not otherwise. The exemption in this section does not apply to personal property used by the seller in the production of marijuana, useable marijuana, or marijuana-infused products.

**Sec. 16.** RCW 82.12.0258 and 2009 c 535 s 612 are each amended to read as follows:

The provisions of this chapter do not apply in respect to the use of personal property (including household goods) that has been used in conducting a farm activity, if such property was purchased from a farmer as defined in RCW 82.04.213 at an auction sale held or conducted by an auctioneer upon a farm and not otherwise. The exemption in this section does not apply to personal property used by the seller in the production of marijuana, useable marijuana, or marijuana-infused products.

**Sec. 17.** RCW 82.08.0273 and 2011 c 7 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to nonresidents of this state of tangible personal property, digital goods, and digital codes, when:

(a) The property is for use outside this state;

(b) The purchaser is a bona fide resident of a province or territory of Canada or a state, territory, or possession of the United States, other than the state of Washington; and

(i) Such state, possession, territory, or province does not impose, or have imposed on its behalf, a generally applicable retail sales tax, use tax, value added tax, gross receipts tax on retailing activities, or similar generally applicable tax, of three percent or more; or

(ii) If imposing a tax described in (b)(i) of this subsection, provides an exemption for sales to Washington residents by reason of their residence; and

(c) The purchaser agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(c) In lieu of furnishing proof of a person's nonresident status under (b) of this subsection (3), a person claiming exemption from retail sales tax under the provisions of this section may provide the seller with an exemption certificate in compliance with subsection (4)(b) of this section.

(4)(a) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which ~~(shall)~~ must show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.



(b) In lieu of using the method provided in (a) of this subsection to document an exempt sale to a nonresident, a seller may accept from the purchaser a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board or any other exemption certificate as may be authorized by the department and properly completed by the purchaser. A nonresident purchaser who uses an exemption certificate authorized in this subsection (4)(b) must include the purchaser's driver's license number or other state-issued identification number and the state of issuance.

(c) In lieu of using the methods provided in (a) and (b) of this subsection to document an exempt sale to a nonresident, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax and who fails to maintain records of sales to nonresidents as provided in this section is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor are liable for any penalties and interest assessable under chapter 82.32 RCW.

(7) The exemption in this section does not apply to sales of marijuana, useable marijuana, or marijuana-infused products.

**Sec. 18.** RCW 82.08.02745 and 2007 c 54 s 14 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures. The exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section (~~shall~~) must be used according to this section for at least five consecutive years from the date

the housing is approved for occupancy, or the full amount of tax otherwise due (~~shall be~~) is immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time agricultural employee housing that is not located on agricultural land ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due (~~shall be~~) is immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as agricultural employee housing until the date of payment.

(4) The exemption provided in this section (~~shall~~) does not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) For purposes of this section and RCW 82.12.02685(~~+~~), the following definitions apply unless the context clearly requires otherwise.

(a) "Agricultural employee" or "employee" has the same meaning as given in RCW 19.30.010;

(b) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010; and

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.114A.110. "Agricultural employee housing" does not include:

(i) Housing regularly provided on a commercial basis to the general public( ~~("Agricultural employee housing" does not include)~~);

(ii) Housing provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided; and

(iii) Housing provided to agricultural employees providing services related to the growing, raising, or producing of marijuana.

**Sec. 19.** RCW 82.08.0281 and 2004 c 153 s 108 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~shall~~) does 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~~) does 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~~) does 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 following definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(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, marijuana, useable marijuana, or marijuana-infused products:

(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. 20.** RCW 82.08.0288 and 1983 1st ex.s. c 55 s 5 are each amended to read as follows:

The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to the lease of irrigation equipment if:

(1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;

(2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;

(3) The irrigation equipment is attached to the land in whole or in part; (~~and~~)

(4) The irrigation equipment is not used in the production of marijuana; and

(5) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land.

**Sec. 21.** RCW 82.12.0283 and 1983 1st ex.s. c 55 s 6 are each amended to read as follows:

The provisions of this chapter (~~(shall)~~) do not apply to the use of irrigation equipment if:

(1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;

(2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;

(3) The irrigation equipment is attached to the land in whole or in part; (~~and~~)

(4) The irrigation equipment is not used in the production of marijuana; and

(5) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land.

**Sec. 22.** RCW 82.08.0293 and 2011 c 2 s 301 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does 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; and

(c) Marijuana, useable marijuana, or marijuana-infused products.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, or dietary supplements. For purposes of this subsection, the following definitions apply:

(a) "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;

(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.

(b)(i) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) 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; or

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(II) 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.

(ii) "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:

(A) 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";

(B) Food sold in an unheated state by weight or volume as a single item; or

(C) 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.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients 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);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42 of the federal internal revenue code.

(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. Except as provided in (b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) For soft drinks and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(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.

**Sec. 23.** RCW 82.08.820 and 2011 c 174 s 206 are each amended to read as follows:

(1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product( ~~("Finished goods" does not include)~~);

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Marijuana, useable marijuana, or marijuana-infused products;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that

cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(h) "Person" has the meaning given in RCW 82.04.030;

(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(j) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse (~~shall~~) must be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(k) "Third-party warehouse" means a person taxable under RCW 82.04.280(1)(d);

(l) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(m) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department (~~shall~~) must determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer (~~shall~~) must on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer (~~shall~~) must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment;

location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department (~~shall~~) must on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments.

**Sec. 24.** RCW 82.14.430 and 2011 c 171 s 123 are each amended to read as follows:

(1) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a sales and use tax of up to 0.1 percent of the selling price or value of the article used in the case of a use tax. The tax authorized by this section is in addition to the tax authorized by RCW 82.14.030 and must 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 taxing district. Motor vehicles are exempt from the sales and use tax imposed under this subsection.

(2) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a tax on the use of a motor vehicle within a regional transportation investment district. The tax applies to those persons who reside within the regional transportation investment district. The rate of the tax may not exceed 0.1 percent of the value of the motor vehicle. The tax authorized by this subsection is in addition to the tax authorized under RCW 82.14.030 and must be imposed and collected at the time a taxable event under RCW 82.08.020(1) or 82.12.020 takes place. All revenue received under this subsection must be deposited in the local sales and use tax account and distributed to the regional transportation investment district according to RCW 82.14.050. The following provisions apply to the use tax in this subsection:

(a) Where persons are taxable under chapter 82.08 RCW, the seller (~~shall~~) must collect the use tax from the buyer using the collection provisions of RCW 82.08.050.

(b) Where persons are taxable under chapter 82.12 RCW, the use tax must be collected using the provisions of RCW 82.12.045.

(c) "Motor vehicle" has the meaning provided in RCW 46.04.320, but does not include:

(i) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, unless the farm tractor or farm vehicle is for use in the production of marijuana;



(ii) Off-road vehicles as defined in RCW 46.04.365((?));

(iii) Nonhighway vehicles as defined in RCW 46.09.310((?)); and

(iv) Snowmobiles as defined in RCW 46.04.546.

(d) "Person" has the meaning given in RCW 82.04.030.

(e) The value of a motor vehicle must be determined under RCW 82.12.010.

(f) Except as specifically stated in this subsection (2), chapters 82.12 and 82.32 RCW apply to the use tax. The use tax is a local tax imposed under the authority of chapter 82.14 RCW, and chapter 82.14 RCW applies fully to the use tax.

(3) In addition to fulfilling the notice requirements under RCW 82.14.055(1), and unless waived by the department, a regional transportation investment district (~~shall~~) must provide the department of revenue with digital mapping and legal descriptions of areas in which the tax will be collected.

**Sec. 25.** RCW 82.16.050 and 2007 c 330 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. This subsection may 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 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 other than the irrigation of marijuana as defined under RCW 69.50.101;

(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;

(9) 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 its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. No deduction is allowed under this subsection when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(10) Amounts derived from the transportation of agricultural commodities, not including manufactured substances or articles, from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port.

(a) The deduction under this subsection is available only when the person claiming the deduction obtains a certificate from the agricultural commodity dealer operating the interim storage facilities, in a form and manner prescribed by the department, certifying that:

(i) More than ninety-six percent of all of the type of agricultural commodity delivered by the person claiming the deduction under this subsection and delivered by all other persons to the dealer's interim storage facilities during the preceding calendar year was shipped by vessel in original form to interstate or foreign destinations; and

(ii) Any of the agricultural commodity that is transshipped to ports on tidewater or its navigable tributaries will be received at storage facilities operated by the same agricultural commodity dealer and will be shipped from such facilities, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations.

(b) As used in this subsection, "agricultural commodity" has the same meaning as agricultural product in RCW 82.04.213;

(11) Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state or for consumption outside the state;

(12) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(13) 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;

(14) Amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. For the purposes of this subsection, "public transportation agency" means a municipality, as defined in RCW 35.58.272, and urban public transportation systems, as defined in RCW 47.04.082. Public transportation agencies ~~(shall)~~ must spend an amount equal to the reduction in tax provided by this tax deduction solely to adjust routes to improve access for citizens using food banks and senior citizen services or to extend or add new routes to assist low-income citizens and seniors.

**Sec. 26.** RCW 82.29A.020 and 2012 2nd sp.s. c 6 s 501 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Leasehold interest" means an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership. However, no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government may constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" includes the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" does not include road or utility easements, rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner, or rights of access, occupancy, or use granted solely for the purpose of natural energy resource exploration. "Leasehold interest" does not include the preferential use of publicly owned cargo cranes and docks and associated areas used in the loading and discharging of cargo located at a port district marine facility. "Preferential use" means that publicly owned real or personal property is used by a private party under a written agreement with the public owner, but the public owner or any third party maintains a right to use the property when not being used by the private party.

(2)(a) "Taxable rent" means contract rent as defined in (c) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor. However, after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in (g) of this subsection. All other leasehold interests are subject to the determination of taxable rent under the terms of (g) of this subsection.

(b) For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent includes only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and does not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(c) "Contract rent" means the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to

another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest is part of contract rent.

(d) "Contract rent" does not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements are taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

(e) Any prepaid contract rent is considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent must be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, must be prorated from the date of prepayment.

(f) With respect to a "product lease", the value is that value determined at the time of sale under terms of the lease.

(g) If it is determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration must be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration must be given to what

would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter means a lease of property for use in the production of agricultural or marine products, not including the production of marijuana as defined in RCW 69.50.101, to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" means a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

(6) "Products" includes natural resource products such as cut or picked evergreen foliage, Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, geothermal water and steam, and forage removed through the grazing of livestock.

**NEW SECTION. Sec. 27.** A new section is added to chapter 84.34 RCW to read as follows:

The provisions of this chapter do not apply with respect to land used in the growing, raising, or producing of marijuana, useable marijuana, or marijuana-infused products as those terms are defined under RCW 69.50.101.

**Sec. 28.** RCW 84.36.630 and 2003 c 302 s 7 are each amended to read as follows:

(1) All machinery and equipment owned by a farmer that is personal property is exempt from property taxes levied for any state purpose if it is used exclusively in growing and producing agricultural products during the calendar year for which the claim for exemption is made.

(2) "Farmer" (~~has~~) and "agricultural product" have the same meaning as defined in RCW 82.04.213.

(3) A claim for exemption under this section (~~shall~~) must be filed with the county assessor together with the statement required under RCW 84.40.190, for exemption from taxes payable the following year. The claim (~~shall~~) must be made solely upon forms as prescribed and furnished by the department of revenue.

**Sec. 29.** RCW 84.40.030 and 2007 c 301 s 2 are each amended to read as follows:

(1) All property (~~shall~~) must be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

(2) Taxable leasehold estates (~~(shall)~~) must be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

(3) The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) (~~(shall)~~) must be based upon the following criteria:

((+)) (a) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal (~~(shall)~~) must be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage or highest and best use not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes or other government restrictions. The appraisal (~~(shall)~~) must also take into account: ((+)) (i) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and ((+)) (ii) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements (~~(shall)~~) may not be used as sales of similar property.

((+)) (b) In addition to sales as defined in subsection ((+)) (3)(a) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (~~(shall)~~) must be the dominant factors in valuation. When provisions of this subsection are relied upon for establishing values the property owner (~~(shall)~~) must be advised upon request of the factors used in arriving at such value.

((+)) (c) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon (~~(shall)~~) must be determined; also the true and fair value of structures thereon, but the valuation (~~(shall)~~) may not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops (~~(shall)~~) must be excluded. For purposes of this subsection (3)(c), "growing crops" does not include marijuana as defined under RCW 69.50.101.

**Sec. 30.** RCW 82.02.010 and 2011 c 298 s 37 are each amended to read as follows:

For the purpose of this title, unless the context clearly requires otherwise:

(1) "Department" means the department of revenue of the state of Washington;

(2) "Director" means the director of the department of revenue of the state of Washington;

(3) "Marijuana," "marijuana-infused products," and "useable marijuana" have the same meanings as provided in RCW 69.50.101.

(4) "Taxpayer" includes any individual, group of individuals, corporation, or association liable for any tax or the collection of any tax hereunder, or who engages in any business or performs any act for which a tax is imposed by this title. "Taxpayer" also includes any person liable for any fee or other charge collected by the department under any provision of law, including registration assessments and delinquency fees imposed under RCW 59.30.050; and

~~((4))~~ (5) Words in the singular number include the plural and the plural include the singular. Words in one gender include all other genders.

**Sec. 31.** RCW 15.13.270 and 2007 c 335 s 4 are each amended to read as follows:

(1) The provisions of this chapter relating to nursery dealer licensing do not apply to: ~~((4))~~ (a) Persons making casual or isolated sales that do not exceed one hundred dollars annually; ~~((2))~~ (b) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants which are grown by or donated to its members; ~~((3))~~ (c) educational organizations associated with private or public secondary schools; and (d) the production of marijuana and persons who are licensed as marijuana producers under RCW 69.50.325 with respect to the operations under such license. For the purposes of this subsection, the terms "marijuana" and "marijuana producer" have the same meanings as provided in RCW 69.50.101. However, such a club, conservation district, association, or organization ~~((shall))~~ must apply to the director for a permit to conduct such sales.

(2) All horticultural plants sold under such a permit ~~((shall))~~ must be in compliance with the provisions of this chapter.

**Sec. 32.** RCW 15.13.270 and 2000 c 144 s 5 are each amended to read as follows:

(1) The provisions of this chapter relating to licensing do not apply to: ~~((4))~~ (a) Persons making casual or isolated sales that do not exceed one hundred dollars annually; ~~((2))~~ (b) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants which are grown by or donated to its members; ~~((3))~~ (c) educational organizations associated with private or public secondary schools; and (d) the production of marijuana and persons who are licensed as marijuana producers under RCW 69.50.325 with respect to the operations under such license. For the purposes of this subsection, the terms "marijuana" and "marijuana producer" have the same meanings as provided in RCW 69.50.101. However, such a club, conservation district, association, or organization ~~((shall))~~ must apply to the director for a permit to conduct such sales.

(2) All horticultural plants sold under such a permit ~~((shall))~~ must be in compliance with the provisions of this chapter.

**Sec. 33.** RCW 15.17.020 and 1998 c 154 s 2 are each amended to read as follows:

For the purpose of this chapter:

(1) "Agent" means broker, commission merchant, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(2) "Certification" means, but is not limited to, the issuance by the director of an inspection certificate or other official document stating the grade, classification, and/or condition of any fruits or vegetables, and/or if the fruits or vegetables are free of plant pests and/or other defects.

(3) "Combination grade" means two or more grades packed together as one, except cull grades, with a minimum percent of the product of the higher grade, as established by rule.

(4) "Compliance agreement" means an agreement entered into between the department and a shipper or packer, that authorizes the shipper or packer to issue certificates of compliance for fruits and vegetables.

(5) "Container" means any container or subcontainer used to prepackage any fruits or vegetables. This does not include a container used by a retailer to package fruits or vegetables sold from a bulk display to a consumer.

(6) "Deceptive arrangement or display" means any bulk lot or load, arrangement, or display of fruits or vegetables which has in the exposed surface, fruits or vegetables which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of the bulk lot or load, arrangement, or display.

(7) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface fruits or vegetables which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of fruits or vegetables whose size is not an accurate representation of the variation of the size of the fruits or vegetables in the entire container, even though the fruits or vegetables in the container are virtually uniform in size or comply with the specific standards adopted under this chapter.

(8) "Department" means the department of agriculture of the state of Washington.

(9) "Director" means the director of the department or his or her duly authorized representative.

(10) "District manager" means a person representing the director in charge of overall operation of a fruit and vegetable inspection district established under RCW 15.17.230.

(11) "Facility" means, but is not limited to, the premises where fruits and vegetables are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport fruits and vegetables.

(12) "Fruits and vegetables" means any unprocessed fruits or vegetables, but does not include marijuana as defined in RCW 69.50.101.

(13) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing fruits or vegetables that he or she has purchased or acquired from a producer.



(14) "Inspection" means, but is not limited to, the inspection by the director of any fruits or vegetables at any time prior to, during, or subsequent to harvest.

(15) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any wrapper, container, container label or lining, or any placard used in connection with and having reference to fruits or vegetables.

(16) "Person" means any individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee thereof.

(17) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(18) "Sell" means to sell, offer for sale, hold for sale, or ship or transport in bulk or in containers.

(19) "Standards" means grades, classifications, and other inspection criteria for fruits and vegetables.

**Sec. 34.** RCW 15.49.061 and 1989 c 354 s 76 are each amended to read as follows:

(1) The provisions of this chapter do not apply to marijuana seed. For the purposes of this subsection, "marijuana" has the same meaning as defined in RCW 69.50.101.

(2) The provisions of RCW 15.49.011 through 15.49.051 do not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage by, or being transported or consigned to a conditioning establishment for conditioning if the invoice or labeling accompanying the shipment of such seed bears the statement "seeds for conditioning" and if any labeling or other representation that may be made with respect to the unconditioned seed is subject to this chapter;

(c) To any carrier with respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if the carrier is not engaged in producing, conditioning, or marketing seeds subject to this chapter; or

(d) Seed stored or transported by the grower of the seed.

~~((2))~~ (3) No person may be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter that were incorrectly labeled or represented as to kind, species, variety, or type, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.

**Sec. 35.** RCW 20.01.030 and 2013 c 23 s 38 are each amended to read as follows:

This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the

requirements of chapter 23.86 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the processed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouse operator or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nursery dealer who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder;

(11) Any domestic winery, as defined in RCW 66.04.010, licensed under Title 66 RCW, with respect to its transactions involving agricultural products used by the domestic winery in making wine;

(12) Any person licensed as a marijuana producer or processor under RCW 69.50.325 with respect to the operations under such license. The definitions in RCW 69.50.101 apply to this subsection (12).

NEW SECTION. Sec. 36. Section 3 of this act expires July 1, 2015.

NEW SECTION. Sec. 37. Section 4 of this act takes effect July 1, 2015.

NEW SECTION. Sec. 38. Section 5 of this act expires July 1, 2015, subject to the contingency stated in section 2, chapter . . . (ESSB 5952), Laws of 2013 3rd sp. sess.

NEW SECTION. Sec. 39. Section 6 of this act takes effect July 1, 2015, subject to the contingency stated in section 2, chapter . . . (ESSB 5952), Laws of 2013 3rd sp. sess.

NEW SECTION. Sec. 40. Section 10 of this act expires December 31, 2020.

NEW SECTION. Sec. 41. Section 31 of this act expires July 1, 2020.

NEW SECTION. Sec. 42. Section 32 of this act takes effect July 1, 2020.

Passed by the Senate March 4, 2014.

Passed by the House March 12, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 141

[Engrossed Substitute Senate Bill 6511]

### HEALTH INSURANCE—WORK GROUP—PRIOR AUTHORIZATION REQUIREMENTS

AN ACT Relating to prior authorization of health care services; and adding a new section to chapter 48.165 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.165 RCW to read as follows:

(1) The insurance commissioner must reauthorize the efforts with the lead organization established in RCW 48.165.030, and establish a new work group to develop recommendations for prior authorization requirements. The focus of the prior authorization efforts must include the full scope of health care services including pharmacy issues. The work group must submit recommendations to the commissioner by October 31, 2014.

(2) The lead organization and work group established to review prior authorization requirements must consider the following areas in their efforts:

(a) Requiring carriers and pharmacy benefit managers to provide a listing of prior authorization requirements electronically on a web site. The listing of requirements for any procedure, supply, or service requiring preauthorization must include criteria needed by the carrier specific to that medical or procedural code, to allow a provider's office to submit all information needed on the initial request for prior authorization, along with instructions for submitting that information;

(b) Requiring a carrier or pharmacy benefit manager to issue an acknowledgement of receipt or reference number for prior authorization within a specified time frame, such as two business days of receipt of a prior authorization request from a provider;

(c) Recommendations for the best practices for exchanging information, including alternatives to fax requests;

(d) Recommendations for the best practices if the acknowledgement has not been received by the provider or pharmacy benefit manager within the specified time frame, such as two business days;

(e) Recommendations if the carrier or pharmacy benefit manager fails to approve, deny, or respond to the request for authorization within the specified time frame and options for deeming approval;

(f) Recommendations to refine the time frames in current rule; and

(g) Recommendations specific to pharmacy services, including communication between the pharmacy to the carrier or pharmacy benefit manager, communications between the carrier or pharmacy benefit manager with the providers' office, communication of the authorization number, posting of the criteria for pharmacy related prior authorization on a web site and other recommended alternatives; and options for prior authorizations involving urgent and emergent care with short-term prescription fill, such as a three-day supply, while the authorization is obtained.

(3) In preparing the recommendations, the work group must consider the opportunities to align with national mandates and regulatory guidance in the health insurance portability and accountability act and the patient protection and affordable care act, and use information technologies and electronic health records to increase efficiencies in health care and reengineer and automate age-old practices to improve business functions and ensure timely access to care for patients.

(4) The commissioner shall adopt rules implementing the recommendations of the work group. The rules adopted under this subsection may only implement, and may not expand or limit, the recommendations of the work group.

Passed by the Senate March 11, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 142

[Senate Bill 6522]

### PUBLIC RECORDS—EXEMPTION—INDUSTRIAL INSURANCE SETTLEMENT NEGOTIATIONS

AN ACT Relating to restricting the use of personal information gathered during the claims resolution structured settlement agreement process; amending RCW 51.04.063; and reenacting and amending RCW 42.56.230.

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

**Sec. 1.** RCW 42.56.230 and 2013 c 336 s 3 and 2013 c 220 s 1 are each reenacted and amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of early learning; or

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early

learning or child care services, parks and recreation programs, youth development programs, and after-school programs.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; (~~and~~)

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicaid issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse(~~(-~~

~~(-)); and~~

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this (~~subsection~~) section that is subject to public disclosure.

**Sec. 2.** RCW 51.04.063 and 2013 c 23 s 104 are each amended to read as follows:

(1) Notwithstanding RCW 51.04.060 or any other provision of this title, beginning on January 1, 2012, an injured worker who is at least fifty-five years of age on or after January 1, 2012, fifty-three years of age on or after January 1, 2015, or fifty years of age on or after January 1, 2016, may choose from the following: (a) To continue to receive all benefits for which they are eligible under this title, (b) to participate in vocational training if eligible, or (c) to initiate and agree to a resolution of their claim with a structured settlement.

(2)(a) As provided in this section, the parties to an allowed claim may initiate and agree to resolve a claim with a structured settlement for all benefits other than medical. Parties as defined in (b) of this subsection may only initiate claim resolution structured settlements if at least one hundred eighty days have passed since the claim was received by the department or self-insurer and the order allowing the claim is final and binding. All requirements of this title regarding entitlement to and payment of benefits will apply during this period. All claim resolution structured settlement agreements must be approved by the board of industrial insurance appeals.

(b) For purposes of this section, "parties" means:

(i) For a state fund claim, the worker, the employer, and the department. The employer will not be a party if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums, if they cannot be located, are no longer in business, or they fail to respond or decline to participate after timely notice of the claim resolution settlement process provided by the board and the department.

(ii) For a self-insured claim, the worker and the employer.

(c) The claim resolution structured settlement agreements shall:

(i) Bind the parties with regard to all aspects of a claim except medical benefits unless revoked by one of the parties as provided in subsection (6) of this section;

(ii) Provide a periodic payment schedule to the worker equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(iii) Not set aside or reverse an allowance order;

(iv) Not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and

(v) Not subject any funds covered under this title to any responsibility or burden without prior approval from the director or designee.

(d) For state fund claims, the department shall negotiate the claim resolution structured settlement agreement with the worker or their representative and with the employer or employers and their representative or representatives.

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or his or her representative. Workers of self-insured employers who are unrepresented may request that the office of the ombuds for self-insured injured workers provide assistance or be present during negotiations.

(f) Terms of the agreement may include the parties' agreement that the claim shall remain open for future necessary medical or surgical treatment related to the injury where there is a reasonable expectation such treatment is necessary. The parties may also agree that specific future treatment shall be provided without the application required in RCW 51.32.160.

(g) Any claim resolution structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(h) If a worker is not represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties must forward a copy of the signed agreement to the board with a request for a conference with an industrial appeals judge. The industrial appeals judge must schedule a conference with all parties within fourteen days for the purpose of (i) reviewing the terms of the proposed settlement agreement by the parties; and (ii) ensuring the worker has an understanding of the benefits generally available under this title and that a claim resolution structured settlement agreement may alter the benefits payable on the claim or claims. The judge may schedule the initial conference for a later date with the consent of the parties.

(i) Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker.

(j) The industrial appeals judge may approve a claim resolution structured settlement agreement only if the judge finds that the agreement is in the best interest of the worker. When determining whether the agreement is in the best interest of the worker, the industrial appeals judge shall consider the following factors, taken as a whole, with no individual factor being determinative:

(i) The nature and extent of the injuries and disabilities of the worker;

(ii) The age and life expectancy of the injured worker;

(iii) Other benefits the injured worker is receiving or is entitled to receive and the effect a claim resolution structured settlement agreement might have on those benefits; and

(iv) The marital or domestic partnership status of the injured worker.

(k) Within seven days after the conference, the industrial appeals judge shall issue an order allowing or rejecting the claim resolution structured settlement agreement. There is no appeal from the industrial appeals judge's decision.

(l) If the industrial appeals judge issues an order allowing the claim resolution structured settlement agreement, the order must be submitted to the board.

(3) Upon receiving the agreement, the board shall approve it within thirty working days of receipt unless it finds that:

(a) The parties have not entered into the agreement knowingly and willingly;

(b) The agreement does not meet the requirements of a claim resolution structured settlement agreement;

(c) The agreement is the result of a material misrepresentation of law or fact;

(d) The agreement is the result of harassment or coercion; or

(e) The agreement is unreasonable as a matter of law.

(4) If a worker is represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties shall submit the agreement directly to the board without the conference described in this section.

(5) If the board approves the agreement, it shall provide notice to all parties. The department shall place the agreement in the applicable claim file or files.

(6) A party may revoke consent to the claim resolution structured settlement agreement by providing written notice to the other parties and the board within thirty days after the date the agreement is approved by the board.

(7) To the extent the worker is entitled to any benefits while a claim resolution structured settlement agreement is being negotiated or during the revocation period of an agreement, the benefits must be paid pursuant to the requirements of this title until the agreement becomes final.

(8) A claim resolution structured settlement agreement that meets the conditions in this section and that has become final and binding as provided in this section is binding on all parties to the agreement as to its terms and the injuries and occupational diseases to which the agreement applies. A claim resolution structured settlement agreement that has become final and binding is not subject to appeal.

(9) All payments made to a worker pursuant to a final claim resolution structured settlement agreement must be reported to the department as claims costs pursuant to this title. If a self-insured employer contracts with a third-party administrator for claim services and the payment of benefits under this title, the third-party administrator shall also disburse the structured settlement payments pursuant to the agreement.

(10) Claims closed pursuant to a claim resolution structured settlement agreement can be reopened pursuant to RCW 51.32.160 for medical treatment only. Further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable under the same claim or claims for which a claim resolution structured settlement agreement has been approved by the board and has become final.

(11) Parties aggrieved by the failure of any other party to comply with the terms of a claim resolution structured settlement agreement have one year from the date of failure to comply to petition to the board. If the board determines that a party has failed to comply with an agreement, it will order compliance and will impose a penalty payable to the aggrieved party of up to twenty-five percent of the monetary amount unpaid at the time the petition for noncompliance was filed. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution structured settlement agreements.

(12) Parties and their representatives may not use settlement offers or the claim resolution structured settlement agreement process to harass or coerce any party. If the department determines that an employer has engaged in a pattern of harassment or coercion, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030.

(13) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals, other than final orders from the board of industrial insurance appeals, is private and exempt from disclosure under chapter 42.56 RCW.



(14) Information gathered during the claims resolution structured settlement agreement process, including but not limited to forms filled out by the parties and testimony during a claims resolution structured settlement conference before the board of industrial insurance appeals, is a statement made in the course of compromise negotiations and is inadmissible in any future litigation.

Passed by the Senate February 12, 2014.

Passed by the House March 6, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 143

[Engrossed Substitute Senate Bill 6570]

### HOSPITAL SAFETY NET ASSESSMENT—TIMELINES

AN ACT Relating to adjusting timelines for fiscal year 2014 regarding the hospital safety net assessment; amending RCW 74.60.030, 74.60.120, and 74.60.130; and declaring an emergency.

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

**Sec. 1.** RCW 74.60.030 and 2013 2nd sp.s. c 17 s 4 are each amended to read as follows:

(1)(a) Upon satisfaction of the conditions in RCW 74.60.150(1), and so long as the conditions in RCW 74.60.150(2) have not occurred, an assessment is imposed as set forth in this subsection, effective ~~((July 1, 2013. The authority shall calculate the amount due annually and shall issue assessments quarterly for one fourth))~~ October 1, 2013. Initial assessment notices must be sent to each hospital not earlier than thirty days after satisfaction of the conditions in RCW 74.60.150(1). Payment is due not sooner than thirty days thereafter. Except for the initial assessment, notices must be sent on or about thirty days prior to the end of each quarter and payment is due thirty days thereafter.

(b) Effective October 1, 2013, and except as provided in RCW 74.60.050:

(i) For fiscal year 2014, an annual assessment for amounts determined as described in (b)(ii) through (iv) of this subsection is imposed for the time period of October 1, 2013, through June 30, 2014. The initial assessment notice must cover amounts due from October 1, 2013, through either: (A) The end of the calendar quarter prior to the satisfaction of the conditions in RCW 74.60.150(1) if federal approval is received more than forty-five days prior to the end of a quarter; or (B) the end of the calendar quarter after the satisfaction of the conditions in RCW 74.60.150(1) if federal approval is received within forty-five days of the end of a quarter. For subsequent assessments during fiscal year 2014, the authority shall calculate the amount due annually and shall issue assessments for the appropriate proportion of the annual amount due from each hospital. ~~(— Initial assessment notices must be sent to each hospital not earlier than thirty days after satisfaction of the conditions in RCW 74.60.150(1) and must include all amounts due from and after July 1, 2013. Payment is due not sooner than thirty days thereafter. Subsequent notices must be sent on or about thirty days prior to the end of each subsequent quarter and payment is due thirty days thereafter.~~

(b) Beginning July 1, 2013, and except as provided in RCW 74.60.050:

(+)):

(ii) After the assessments described in (b)(i) of this subsection, each prospective payment system hospital, except psychiatric and rehabilitation hospitals, shall pay a quarterly assessment. Each quarterly assessment shall be one quarter of three hundred forty-four dollars for each annual nonmedicare hospital inpatient day, up to a maximum of fifty-four thousand days per year. For each nonmedicare hospital inpatient day in excess of fifty-four thousand days, each prospective payment system hospital shall pay an assessment of one quarter of seven dollars for each such day;

~~((ii))~~ (iii) After the assessments described in (b)(i) of this subsection, each critical access hospital shall pay a quarterly assessment of one quarter of ten dollars for each annual nonmedicare hospital inpatient day;

~~((iii))~~ (iv) After the assessments described in (b)(i) of this subsection, each psychiatric hospital shall pay a quarterly assessment of one quarter of sixty-seven dollars for each annual nonmedicare hospital inpatient day; and

~~((iv))~~ (v) After the assessments described in (b)(i) of this subsection, each rehabilitation hospital shall pay a quarterly assessment of one quarter of sixty-seven dollars for each annual nonmedicare hospital inpatient day.

(2) The authority shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare hospital inpatient days for each hospital that is not exempt from the assessment under RCW 74.60.040, taken from the hospital's 2552 cost report data file or successor data file available through the centers for medicare and medicaid services, as of a date to be determined by the authority. For state fiscal year 2014, the authority shall use cost report data for hospitals' fiscal years ending in 2010. For subsequent years, the hospitals' next succeeding fiscal year cost report data must be used.

(a) With the exception of a prospective payment system hospital commencing operations after January 1, 2009, for any hospital without a cost report for the relevant fiscal year, the authority shall work with the affected hospital to identify appropriate supplemental information that may be used to determine annual nonmedicare hospital inpatient days.

(b) A prospective payment system hospital commencing operations after January 1, 2009, must be assessed in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010.

**Sec. 2.** RCW 74.60.120 and 2013 2nd sp.s. c 17 s 11 are each amended to read as follows:

(1) Beginning in state fiscal year 2014, commencing thirty days after satisfaction of the applicable conditions in RCW 74.60.150(1), and for the period of state fiscal years 2014 through 2019, the authority shall make supplemental payments directly to Washington hospitals, separately for inpatient and outpatient fee-for-service medicaid services, as follows:

(a) For inpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, twenty-nine million two hundred twenty-five thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(b) For outpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, thirty million dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(c) For inpatient fee-for-service payments for psychiatric hospitals, six hundred twenty-five thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(d) For inpatient fee-for-service payments for rehabilitation hospitals, one hundred fifty thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(e) For inpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds; and

(f) For outpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds.

(2) If the amount of inpatient or outpatient payments under subsection (1) of this section, when combined with federal matching funds, exceeds the upper payment limit, payments to each category of hospital must be reduced proportionately to a level where the total payment amount is consistent with the upper payment limit. Funds under this chapter unable to be paid to hospitals under this section because of the upper payment limit must be paid to managed care organizations under RCW 74.60.130, subject to the limitations in this chapter.

(3) The amount of such fee-for-service inpatient payments to individual hospitals within each of the categories identified in subsection (1)(a), (c), (d), and (e) of this section must be determined by:

(a) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to each hospital's inpatient fee-for-services claims and medicaid managed care encounter data for the base year;

(b) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to all hospitals' inpatient fee-for-services claims and medicaid managed care encounter data for the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(4) The amount of such fee-for-service outpatient payments to individual hospitals within each of the categories identified in subsection (1)(b) and (f) of this section must be determined by:

(a) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to each hospital's outpatient fee-for-services claims and medicaid managed care encounter data for the base year;

(b) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to all hospitals' outpatient fee-for-services claims and medicaid managed care encounter data for the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(5) Thirty days before the initial payments and sixty days before the first payment in each subsequent fiscal year, the authority shall provide each hospital and the Washington state hospital association with an explanation of how the amounts due to each hospital under this section were calculated.

(6) Payments must be made in quarterly installments on or about the last day of every quarter(~~(-except that)~~). The initial payment must be made within thirty days after satisfaction of the conditions in RCW 74.60.150(1) and must include all amounts due from July 1, 2013, to ((the date of the initial payment)) either: (a) The end of the calendar quarter prior to when the conditions in RCW 70.60.150(1) are satisfied if approval is received more than forty-five days prior to the end of a quarter; or (b) the end of the calendar quarter after the satisfaction of the conditions in RCW 74.60.150(1) if approval is received within forty-five days of the end of a quarter.

(7) A prospective payment system hospital commencing operations after January 1, 2009, is eligible to receive payments in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010.

(8) Payments under this section are supplemental to all other payments and do not reduce any other payments to hospitals.

**Sec. 3.** RCW 74.60.130 and 2013 2nd sp.s. c 17 s 12 are each amended to read as follows:

(1) For state fiscal year 2014, commencing within thirty days after satisfaction of the conditions in RCW 74.60.150(1) and subsection (6) of this section, and for the period of state fiscal years 2014 through 2019, the authority shall increase capitation payments to managed care organizations by an amount at least equal to the amount available from the fund after deducting disbursements authorized by RCW 74.60.020(4) (c) through (f) and payments required by RCW 74.60.080 through 74.60.120. The capitation payment under this subsection must be no less than one hundred fifty-three million one hundred thirty-one thousand six hundred dollars per state fiscal year in fiscal years 2014 and 2015, and then the increased capitation payment amounts are reduced in equal increments per fiscal year until the increased capitation payment amount is zero by July 1, 2019, plus the maximum available amount of federal matching funds. The initial payment following satisfaction of the conditions in RCW 74.60.150(1) must include all amounts due from July 1, 2013, to the end of the

calendar month during which the conditions in RCW 74.60.150(1) are satisfied. Subsequent payments shall be made (~~(quarterly)~~) monthly.

(2) In fiscal years 2015, 2016, and 2017, the authority shall use any additional federal matching funds for the increased managed care capitation payments under subsection (1) of this section available from medicaid expansion under the federal patient protection and affordable care act to substitute for assessment funds which otherwise would have been used to pay managed care plans under this section.

(3) Payments to individual managed care organizations shall be determined by the authority based on each organization's or network's enrollment relative to the anticipated total enrollment in each program for the fiscal year in question, the anticipated utilization of hospital services by an organization's or network's medicaid enrollees, and such other factors as are reasonable and appropriate to ensure that purposes of this chapter are met.

(4) If the federal government determines that total payments to managed care organizations under this section exceed what is permitted under applicable medicaid laws and regulations, payments must be reduced to levels that meet such requirements, and the balance remaining must be applied as provided in RCW 74.60.050. Further, in the event a managed care organization is legally obligated to repay amounts distributed to hospitals under this section to the state or federal government, a managed care organization may recoup the amount it is obligated to repay under the medicaid program from individual hospitals by not more than the amount of overpayment each hospital received from that managed care organization.

(5) Payments under this section do not reduce the amounts that otherwise would be paid to managed care organizations: PROVIDED, That such payments are consistent with actuarial soundness certification and enrollment.

(6) Before making such payments, the authority shall require medicaid managed care organizations to comply with the following requirements:

(a) All payments to managed care organizations under this chapter must be expended for hospital services provided by Washington hospitals, which for purposes of this section includes psychiatric and rehabilitation hospitals, in a manner consistent with the purposes and provisions of this chapter, and must be equal to all increased capitation payments under this section received by the organization or network, consistent with actuarial certification and enrollment, less an allowance for any estimated premium taxes the organization is required to pay under Title 48 RCW associated with the payments under this chapter;

(b) (~~Before the end of the quarter in which funds are paid to them,~~) Managed care organizations shall expend the increased capitation payments under this section in a manner consistent with the purposes of this chapter, with the initial expenditures to hospitals to be made within thirty days of receipt of payment from the authority. Subsequent expenditures by the managed care plans are to be made before the end of the quarter in which funds are received from the authority;

(c) Providing that any delegation or attempted delegation of an organization's or network's obligations under agreements with the authority do not relieve the organization or network of its obligations under this section and related contract provisions.

(7) No hospital or managed care organizations may use the payments under this section to gain advantage in negotiations.

(8) No hospital has a claim or cause of action against a managed care organization for monetary compensation based on the amount of payments under subsection (6) of this section.

(9) If funds cannot be used to pay for services in accordance with this chapter the managed care organization or network must return the funds to the authority which shall return them to the hospital safety net assessment fund.

**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 Senate March 4, 2014.

Passed by the House March 11, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

## CHAPTER 144

[Engrossed Substitute House Bill 2023]

### SECURITIES—SMALL SECURITIES—CROWDFUNDING

AN ACT Relating to allowing crowdfunding for certain small securities offerings; amending RCW 42.56.270; adding new sections to chapter 21.20 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** This act may be known and cited as the Washington jobs act of 2014.

**NEW SECTION. Sec. 2.** The legislature finds that start-up companies play a critical role in creating new jobs and revenues. Crowdfunding, or raising money through small contributions from a large number of investors, allows smaller enterprises to access the capital they need to get new businesses off the ground. The legislature further finds that the costs of state securities registration often outweigh the benefits to Washington start-ups seeking to make small securities offerings and that the use of crowdfunding for business financing in Washington is significantly restricted by state securities laws. Helping new businesses access equity crowdfunding within certain boundaries will democratize venture capital and facilitate investment by Washington residents in Washington start-ups while protecting consumers and investors. For these reasons, the legislature intends to provide Washington businesses and investors the opportunity to benefit from equity crowdfunding.

**NEW SECTION. Sec. 3.** A new section is added to chapter 21.20 RCW to read as follows:

(1) Any offer or sale of a security is exempt from RCW 21.20.040 through 21.20.300 and 21.20.327, except as expressly provided, if:

(a) The offering is first declared exempt by the director after:

(i) The issuer files the offering with the director; or

(ii) A portal working in collaboration with the director files the offering with the director on behalf of the issuer under section 4 of this act;

(b) The offering is conducted in accordance with the requirements of section 3(a)(11) of the securities act of 1933 and securities and exchange commission rule 147, 17 C.F.R. Sec. 230.147;

(c) The issuer is an entity organized and doing business in the state of Washington;

(d) Each investor provides evidence or certification of residency in the state of Washington at the time of purchase;

(e) The issuer files with the director an escrow agreement either directly or through a portal providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors equals or exceeds the minimum target offering, as determined by the director;

(f) The aggregate purchase price of all securities sold by an issuer pursuant to the exemption provided by this section does not exceed one million dollars during any twelve-month period;

(g) The aggregate amount sold to any investor by one or more issuers during the twelve-month period preceding the date of the sale does not exceed:

(i) The greater of two thousand dollars or five percent of the annual income or net worth of the investor, as applicable, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(ii) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more;

(h) The investor acknowledges by manual or electronic signature the following statement conspicuously presented at the time of sale on a page separate from other information relating to the offering: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment";

(i) The issuer reasonably believes that all purchasers are purchasing for investment and not for sale in connection with a distribution of the security; and

(j) The issuer and investor provide any other information reasonably requested by the director.

(2) Attempted compliance with the exemption provided by this section does not act as an exclusive election. The issuer may claim any other applicable exemption.

(3) For as long as securities issued under the exemption provided by this section are outstanding, the issuer shall provide a quarterly report to the issuer's shareholders and the director by making such report publicly accessible, free of charge, at the issuer's internet web site address within forty-five days of the end of each fiscal quarter. The report must contain the following information:

(a) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them; and

(b) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

(4) Securities issued under the exemption provided by this section may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

- (a) To the issuer of the securities;
- (b) To an accredited investor;
- (c) As part of a registered offering; or

(d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(5) The director shall adopt disqualification provisions under which this exemption shall not be available to any person or its predecessors, affiliates, officers, directors, underwriters, or other related persons. The provisions shall be substantially similar to the disqualification provisions adopted by the securities and exchange commission pursuant to the requirements of section 401(b)(2) of the Jobs act of 2012 or, if none, as adopted in Rule 506 of Regulation D. Notwithstanding the foregoing, this exemption shall become available on the effective date of this section.

**NEW SECTION. Sec. 4.** A new section is added to chapter 21.20 RCW to read as follows:

(1) Only a local associate development organization, as defined in RCW 43.330.010, a port district, or an organization that qualifies as a portal pursuant to regulations promulgated by the director, may work in collaboration with the director to act as a portal under this chapter.

(2) A portal shall require, at a minimum, the following information from an applicant for exemption prior to offering services to the applicant or forwarding the applicant's materials to the director:

- (a) A description of the issuer, including type of entity, location, and business plan, if any;
- (b) The applicant's intended use of proceeds from an offering under this act;
- (c) Identities of officers, directors, managing members, and ten percent beneficial owners, as applicable;
- (d) A description of any outstanding securities; and
- (e) A description of any litigation or legal proceedings involving the applicant, its officers, directors, managing members, or ten percent beneficial owners, as applicable.

(3) Upon receipt of the information described in subsection (2) of this section, the portal may offer services to the applicant that the portal deems appropriate or necessary to meet the criteria for exemption under sections 3 and 5 of this act. Such services may include assistance with development of a business plan, referral to legal services, and other technical assistance in preparation for a public securities offering.

(4) The portal shall forward the materials necessary for the applicant to qualify for exemption to the director for filing when the portal is satisfied that the applicant has assembled the necessary information and materials to meet the criteria for exemption under sections 3 and 5 of this act.

(5) The portal shall work in collaboration with the director for the purposes of executing the offering upon filing with the director.

**NEW SECTION. Sec. 5.** A new section is added to chapter 21.20 RCW to read as follows:

The director must adopt rules to implement sections 2 and 3 of this act subject to RCW 21.20.450 including, but not limited to:



(1) Adopting rules for filing with the director under sections 3 and 4 of this act by October 1, 2014;

(2) Establishing filing and transaction fees sufficient to cover the costs of administering this section and sections 2 through 4 of this act by January 1, 2015; and

(3) Adopting any other rules to implement sections 3 and 4 of this act by April 1, 2015.

The director shall take steps and adopt rules to implement this section by the dates specified in this section.

**Sec. 6.** RCW 42.56.270 and 2013 c 305 s 14 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Financial, commercial, operations, and technical and research information and data submitted to or obtained by innovate Washington in applications for, or delivery of, grants and loans under chapter 43.333 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information; (~~and~~)

(22) Market share data submitted by a manufacturer under RCW 70.95N.190(4); and

(23) Financial information supplied to the department of financial institutions or to a portal under section 4 of this act, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under section 3 of this act or when filed by or on behalf of an investor for the purpose of purchasing such securities.

Passed by the House March 11, 2014.

Passed by the Senate March 7, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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## CHAPTER 145

[House Bill 2456]

### LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT PLAN 2—DEFINITION

AN ACT Relating to correcting the expiration date of a definition of firefighter; and amending 2007 c 304 s 4 (uncodified).

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

**Sec. 1.** 2007 c 304 s 4 (uncodified) is amended to read as follows:  
Sections 1 and 3 of this act expire(§) July 1, 2023.

Passed by the House February 13, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 28, 2014.  
 Filed in Office of Secretary of State March 31, 2014.

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### CHAPTER 146

[Substitute Senate Bill 6145]

#### OFFICIAL STATE OYSTER

AN ACT Relating to declaring the *Ostrea lurida* the official oyster of the state of Washington; adding a new section to chapter 1.20 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The *Ostrea lurida* is the only oyster native to Washington state.

**NEW SECTION. Sec. 2.** A new section is added to chapter 1.20 RCW to read as follows:

The *Ostrea lurida* is hereby designated the official oyster of the state of Washington. This native oyster species plays an important role in the history and culture that surrounds shellfish in Washington state and along the west coast of the United States. Some of the common and historic names used for this species are Native, Western, Shoalwater, and Olympia.

Passed by the Senate March 10, 2014.

Passed by the House March 5, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

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### CHAPTER 147

[Engrossed House Bill 1224]

#### GROWTH MANAGEMENT ACT—PLANNING OBLIGATIONS

AN ACT Relating to providing a process for county legislative authorities to withdraw from voluntary planning under the growth management act; amending RCW 36.70A.040, 36.70A.060, and 36.70A.280; and providing an expiration date.

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

**Sec. 1.** RCW 36.70A.040 and 2000 c 36 s 1 are each amended to read as follows:

(1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management

certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons confined in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2)(a) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter, unless the county subsequently adopts a withdrawal resolution for partial planning pursuant to (b)(i) of this subsection.

(b)(i) Until December 31, 2015, the legislative authority of a county may adopt a resolution removing the county and the cities located within the county from the requirements to plan under this section if:

(A) The county has a population, as estimated by the office of financial management, of twenty thousand or fewer inhabitants at any time between April 1, 2010, and April 1, 2015;

(B) The county has previously adopted a resolution indicating its intention to have subsection (1) of this section apply to the county;

(C) At least sixty days prior to adopting a resolution for partial planning, the county provides written notification to the legislative body of each city within the county of its intent to consider adopting the resolution; and

(D) The legislative bodies of at least sixty percent of those cities having an aggregate population of at least seventy-five percent of the incorporated county population have not: Adopted resolutions opposing the action by the county; and provided written notification of the resolutions to the county.

(i) Upon adoption of a resolution for partial planning under (b)(i) of this subsection:

(A) The county and the cities within the county are, except as provided otherwise, no longer obligated to plan under this section; and

(B) The county may not, for a minimum of ten years from the date of adoption of the resolution, adopt another resolution indicating its intention to have subsection (1) of this section apply to the county.

(c) The adoption of a resolution for partial planning under (b)(i) of this subsection does not nullify or otherwise modify the requirements for counties and cities established in RCW 36.70A.060, 36.70A.070(5) and associated development regulations, 36.70A.170, and 36.70A.172.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development

regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department (~~(of community, trade, and economic development)~~) of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department (~~(of community, trade, and economic development)~~) of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall

adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department (~~(of community, trade, and economic development)~~) of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000.

**Sec. 2.** RCW 36.70A.060 and 2005 c 423 s 3 are each amended to read as follows:

(1)(a) (~~(Except as provided in RCW 36.70A.1701,)~~) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(c) Each county that adopts a resolution of partial planning under RCW 36.70A.040(2)(b), and each city within such county, shall adopt development regulations within one year after the adoption of the resolution of partial planning to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection (1)(c) must comply with the requirements governing regulations adopted under (a) of this subsection.

(d)(i) A county that adopts a resolution of partial planning under RCW 36.70A.040(2)(b) and that is not in compliance with the planning requirements of this section, RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time the resolution is adopted must, by January 30, 2017, apply for a determination of compliance from the department finding that the county's development regulations, including development regulations adopted to protect critical areas, and comprehensive plans are in compliance with the requirements of this section, RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172. The department must approve or deny the application for a determination of compliance within one hundred twenty days of its receipt or by June 30, 2017, whichever date is earlier.

(ii) If the department denies an application under (d)(i) of this subsection, the county and each city within is obligated to comply with all requirements of this chapter and the resolution for partial planning adopted under RCW 36.70A.040(2)(b) is no longer in effect.

(iii) A petition for review of a determination of compliance under (d)(i) of this subsection may only be appealed to the growth management hearings board within sixty days of the issuance of the decision by the department.

(iv) In the event of a filing of a petition in accordance with (d)(iii) of this subsection, the county and the department must equally share the costs incurred by the department for defending an approval of determination of compliance that is before the growth management hearings board.

(v) The department may implement this subsection (d) by adopting rules related to determinations of compliance. The rules may address, but are not limited to: The requirements for applications for a determination of compliance; charging of costs under (d)(iv) of this subsection; procedures for processing applications; criteria for the evaluation of applications; issuance and notice of department decisions; and applicable timelines.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

**Sec. 3.** RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the



requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; ~~((e))~~

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That a department determination under RCW 36.70A.060(1)(d) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

NEW SECTION. Sec. 4. Section 3 of this act expires December 31, 2020.

Passed by the House March 12, 2014.

Passed by the Senate March 6, 2014.

Approved by the Governor March 31, 2014.

Filed in Office of Secretary of State March 31, 2014.

## AUTHENTICATION

I, K. Kyle Thiessen, 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 2013 third special session (63rd Legislature), chapters 1 and 2, and the 2014 session (63rd Legislature), chapters 1 through 147, 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 25th day of April, 2014.

A handwritten signature in black ink that reads "K. Kyle Thiessen" with a long horizontal flourish extending to the right.

K. KYLE THIESSEN  
Code Reviser