

SEVENTY-NINTH DAY

MORNING SESSION

Senate Chamber, Olympia, Tuesday, March 31, 2009

The Senate was called to order at 9:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Benton, Brown, Carrell, Fairley, Murray, Roach, Tom and Zarelli.

The Sergeant at Arms Color Guard consisting of Pages Leticia Campos and Grant Woods, presented the Colors. Reverend Jim Erlandson of Community of Christ Church of Olympia offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

There being no objection, the Senate advanced to the first order of business.

REPORTS OF STANDING COMMITTEES

March 30, 2009

SB 5352 Prime Sponsor, Senator Haugen: Making 2009-11 transportation appropriations. Reported by Committee on Transportation

MAJORITY recommendation: That Substitute Senate Bill No. 5352 be substituted therefor, and the substitute bill do pass. Signed by Senators Haugen, Chair; Marr, Vice Chair; Swecker; Becker; Berkey; Eide; Jarrett; Kastama; Kauffman; Kilmer; King and Ranker.

MINORITY recommendation: That it be referred without recommendation. Signed by Senator Delvin.

Passed to Committee on Rules for second reading.

MOTION

On motion of Senator Eide, the measure listed on the Standing Committee report was referred to the committee as designated.

MOTION

On motion of Senator Eide, the Senate advanced to the fourth order of business.

MESSAGE FROM THE HOUSE

March 30, 2009

MR. PRESIDENT:

The House has passed the following bills:
 SUBSTITUTE SENATE BILL NO. 5012,
 SUBSTITUTE SENATE BILL NO. 5030,
 SUBSTITUTE SENATE BILL NO. 5035,
 SUBSTITUTE SENATE BILL NO. 5043,
 SUBSTITUTE SENATE BILL NO. 5055,
 SUBSTITUTE SENATE BILL NO. 5131,

ENGROSSED SENATE BILL NO. 5135,
 SENATE BILL NO. 5156,
 SENATE BILL NO. 5184,
 SUBSTITUTE SENATE BILL NO. 5190,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5228,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5238,
 SUBSTITUTE SENATE BILL NO. 5261,
 SUBSTITUTE SENATE BILL NO. 5290,
 and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

On motion of Senator Eide, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING

SB 6146 by Senator Prentice

AN ACT Relating to the consolidation of the gambling commission into the department of licensing as the office of gambling regulation; amending RCW 9.46.010, 9.46.0201, 9.46.0205, 9.46.0209, 9.46.0217, 9.46.0221, 9.46.0233, 9.46.0261, 9.46.0273, 9.46.0282, 9.46.0311, 9.46.0315, 9.46.0321, 9.46.0331, 9.46.0335, 9.46.0341, 9.46.0345, 9.46.0351, 9.46.0356, 9.46.0361, 9.46.040, 9.46.060, 9.46.070, 9.46.0701, 9.46.071, 9.46.075, 9.46.077, 9.46.080, 9.46.085, 9.46.090, 9.46.095, 9.46.100, 9.46.110, 9.46.116, 9.46.120, 9.46.130, 9.46.140, 9.46.150, 9.46.153, 9.46.158, 9.46.160, 9.46.170, 9.46.198, 9.46.210, 9.46.215, 9.46.220, 9.46.225, 9.46.231, 9.46.250, 9.46.285, 9.46.293, 9.46.300, 9.46.310, 9.46.350, 9.46.360, 9.46.420, 43.24.016, 43.24.020, 43.24.030, 43.24.086, and 43.24.120; and repealing RCW 9.46.050.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, the measure listed on the Introduction and First Reading report was referred to the committee as designated.

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING
 CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Hargrove moved that Gubernatorial Appointment No. 9100, Erik S. Rohrer, as a member of the Board of Trustees, Peninsula Community College District No. 1, be confirmed. Senator Hargrove spoke in favor of the motion.

MOTION

On motion of Senator Marr, Senators Brown, Fairley, Kauffman and Prentice were excused.

APPOINTMENT OF ERIK S. ROHRER

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9100, Erik S. Rohrer as a member of the Board of Trustees, Peninsula Community College District No. 1.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9100, Erik S. Rohrer as a member of the Board of Trustees, Peninsula Community College District No. 1 and the appointment was confirmed by the following vote: Yeas, 41; Nays, 0; Absent, 6; Excused, 2.

Voting yea: Senators Becker, Berkey, Brandland, Delvin, Eide, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens and Swecker

Absent: Senators Benton, Carrell, Murray, Roach, Tom and Zarelli

Excused: Senators Brown and Fairley

Gubernatorial Appointment No. 9100, Erik S. Rohrer, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Peninsula Community College District No. 1.

MOTION

On motion of Senator Brandland, Senators Benton, Carrell, Roach and Zarelli were excused.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Morton moved that Gubernatorial Appointment No. 9087, Erin Munding, as a member of the State Board for Community and Technical Colleges, be confirmed.

Senator Morton spoke in favor of the motion.

MOTION

On motion of Senator Marr, Senators Murray and Tom were excused.

APPOINTMENT OF ERIN MUNDINGER

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9087, Erin Munding as a member of the State Board for Community and Technical Colleges.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9087, Erin Munding as a member of the State Board for Community and Technical Colleges and the appointment was confirmed by the following vote: Yeas, 42; Nays, 0; Absent, 0; Excused, 7.

Voting yea: Senators Becker, Berkey, Brandland, Delvin, Eide, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Excused: Senators Benton, Brown, Carrell, Fairley, Murray, Roach and Zarelli

Gubernatorial Appointment No. 9087, Erin Munding, having received the constitutional majority was declared

confirmed as a member of the State Board for Community and Technical Colleges.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Brandland moved that Gubernatorial Appointment No. 9031, Timothy B. Douglas, as a member of the Board of Trustees, Whatcom Community College District No. 21, be confirmed.

Senator Brandland spoke in favor of the motion.

APPOINTMENT OF TIMOTHY B. DOUGLAS

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9031, Timothy B. Douglas as a member of the Board of Trustees, Whatcom Community College District No. 21.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9031, Timothy B. Douglas as a member of the Board of Trustees, Whatcom Community College District No. 21 and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Excused: Senators Benton, Carrell, Murray and Zarelli

Gubernatorial Appointment No. 9031, Timothy B. Douglas, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Whatcom Community College District No. 21.

SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator King moved that Gubernatorial Appointment No. 9004, Mike Amos, as a member of the Gambling Commission, be confirmed.

Senator King spoke in favor of the motion.

MOTION

On motion of Senator Kauffman, Senator Regala was excused.

APPOINTMENT OF MIKE AMOS

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9004, Mike Amos as a member of the Gambling Commission.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9004, Mike Amos as a member of the Gambling Commission and the appointment was confirmed by the following vote: Yeas, 44; Nays, 0; Absent, 0; Excused, 5.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Excused: Senators Benton, Carrell, Murray, Regala and Zarelli

Gubernatorial Appointment No. 9004, Mike Amos, having received the constitutional majority was declared confirmed as a member of the Gambling Commission.

SECOND READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator McAuliffe moved that Gubernatorial Appointment No. 9042, Judy L. Hartman, as a member of the K-20 Educational Network Board, be confirmed.

Senator McAuliffe spoke in favor of the motion.

APPOINTMENT OF JUDY L. HARTMAN

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9042, Judy L. Hartman as a member of the K-20 Educational Network Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9042, Judy L. Hartman as a member of the K-20 Educational Network Board and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Excused: Senators Benton, Carrell, Regala and Zarelli

Gubernatorial Appointment No. 9042, Judy L. Hartman, having received the constitutional majority was declared confirmed as a member of the K-20 Educational Network Board.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1221, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Maxwell, Hurst, O'Brien, Rodne, Hope, Pedersen, Smith, McCoy, Bailey, Williams, Kirby and Dickerson)

Concerning counseling for witnesses in civil commitment proceedings under chapter 71.09 RCW.

The measure was read the second time.

MOTION

On motion of Senator Hargrove, the rules were suspended, Substitute House Bill No. 1221 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1221.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1221 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Excused: Senators Benton, Carrell and Zarelli

SUBSTITUTE HOUSE BILL NO. 1221, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1280, by House Committee on Commerce & Labor (originally sponsored by Representatives Condotta, Chandler, Crouse, Kretz, Kristiansen and Armstrong)

Regarding the expiration of explosives licenses issued under chapter 70.74 RCW. Revised for 1st Substitute: Regarding explosives licenses.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 1280 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles and Holmquist spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1280.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1280 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Excused: Senators Benton, Carrell and Zarelli

SUBSTITUTE HOUSE BILL NO. 1280, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1291, by House Committee on Local Government & Housing (originally sponsored by Representatives Maxwell, Simpson, Green, Rodne, Clibborn, Hasegawa, Ormsby, Orwall, Lias, Hudgins, Johnson, Sullivan and Hunter)

Changing library district annexation provisions.

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 1291 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1291.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1291 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Excused: Senators Benton and Zarelli

SUBSTITUTE HOUSE BILL NO. 1291, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1433, by Representatives Lias, Sells, Eddy and Clibborn

Addressing liability for damages to state property resulting from the illegal operation of a vehicle.

The measure was read the second time.

MOTION

Senator Jarrett moved that the following committee striking amendment by the Committee on Transportation be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.44.110 and 1984 c 7 s 59 are each amended to read as follows:

Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure that is a part of any such public highway is liable for all damages that the public highway, bridge, ~~((or))~~ elevated structure, or other state property may sustain as a result of any illegal operation of the vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object, or conveyance weighing in excess of the legal weight limits allowed by law. This section applies to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as provided by law for vehicles, objects, or contrivances that are overweight, overwidth, overheight, or overlength. Any person operating any vehicle is liable for any damage to any public highway, bridge, ~~((or))~~ elevated structure, or other state property sustained as the result of any negligent operation thereof. When the operator is not the owner of the vehicle, object, or contrivance but is operating or moving it with the express or implied permission of the owner, the owner and the operator are jointly and severally

liable for any such damage. Such damage to any state highway ~~((or))~~ structure, or other state property may be recovered in a civil action instituted in the name of the state of Washington by the department of transportation or other affected state agency. Any measure of damage ~~((to any public highway))~~ determined by the department of transportation ~~((by reason of))~~ to its highway, bridge, elevated structure, or other property under this section is prima facie the amount of damage caused thereby and is presumed to be the amount recoverable in any civil action therefor. The damages available under this section include the incident response costs, including traffic control, incurred by the department of transportation."

Senator Jarrett spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Transportation to House Bill No. 1433.

The motion by Senator Jarrett carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "vehicle;" strike the remainder of the title and insert "and amending RCW 46.44.110."

MOTION

On motion of Senator Jarrett, the rules were suspended, House Bill No. 1433 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Jarrett spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1433 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1433 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

HOUSE BILL NO. 1433 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1580, by House Committee on General Government Appropriations (originally sponsored by Representatives Kessler, Walsh, Santos, Morris, Blake, Takko, Chandler, McCoy, Newhouse, Kretz, Linville, Jacks, Ormsby, Van De Wege, Hurst, Warnick, Nelson, Hinkle, Springer and Kenney)

Establishing a pilot local water management program in one qualified jurisdiction.

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

The measure was read the second time.

MOTION

Senator Rockefeller moved that the following amendment by Senators Rockefeller and Hewitt be adopted.

On page 3, line 2, after "enhance" strike "instream" and insert "stream"

Senator Rockefeller spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Rockefeller and Hewitt on page 3, line 2 to Second Substitute House Bill No. 1580.

The motion by Senator Rockefeller carried and the amendment was adopted by voice vote.

MOTION

On motion of Senator Rockefeller, the rules were suspended, Second Substitute House Bill No. 1580 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Rockefeller spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1580 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1580 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

SECOND SUBSTITUTE HOUSE BILL NO. 1580 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1957, by House Committee on Capital Budget (originally sponsored by Representatives Jacks, Warnick and Van De Wege)

Identifying qualified applicants and procedures within the Washington wildlife and recreation program.

The measure was read the second time.

MOTION

Senator Jacobsen moved that the following committee striking amendment by the Committee on Natural Resources, Ocean & Recreation be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 79A.15.010 and 2007 c 241 s 26 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" means the purchase on a willing seller basis of fee or less than fee interests in real property. These interests include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

(2) "Board" means the recreation and conservation funding board.

(3) "Critical habitat" means lands important for the protection, management, or public enjoyment of certain wildlife species or groups of species, including, but not limited to, wintering range for deer, elk, and other species, waterfowl and upland bird habitat, fish habitat, and habitat for endangered, threatened, or sensitive species.

(4) "Farmlands" means any land defined as "farm and agricultural land" in RCW 84.34.020(2).

(5) "Local agencies" means a city, county, town, federally recognized Indian tribe, special purpose district, port district, or other political subdivision of the state providing services to less than the entire state.

(6) "Natural areas" means areas that have, to a significant degree, retained their natural character and are important in preserving rare or vanishing flora, fauna, geological, natural historical, or similar features of scientific or educational value.

(7) "Nonprofit nature conservancy corporation or association" means an organization as defined in RCW 84.34.250.

(8) "Riparian habitat" means land adjacent to water bodies, as well as submerged land such as streambeds, which can provide functional habitat for salmonids and other fish and wildlife species. Riparian habitat includes, but is not limited to, shorelines and near-shore marine habitat, estuaries, lakes, wetlands, streams, and rivers.

~~((8))~~ (9) "Special needs populations" means physically restricted people or people of limited means.

~~((9))~~ (10) "State agencies" means the state parks and recreation commission, the department of natural resources, the department of general administration, and the department of fish and wildlife.

~~((10))~~ (11) "Trails" means public ways constructed for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for exclusive use of pedestrians.

~~((11))~~ (12) "Urban wildlife habitat" means lands that provide habitat important to wildlife in proximity to a metropolitan area.

~~((12))~~ (13) "Water access" means boat or foot access to marine waters, lakes, rivers, or streams.

Sec. 2. RCW 79A.15.030 and 2007 c 241 s 28 are each amended to read as follows:

(1) Moneys appropriated for this chapter shall be divided as follows:

(a) Appropriations for a biennium of forty million dollars or less must be allocated equally between the habitat conservation account and the outdoor recreation account.

(b) If appropriations for a biennium total more than forty million dollars, the money must be allocated as follows: (i) Twenty million dollars to the habitat conservation account and twenty million dollars to the outdoor recreation account; (ii) any amount over forty million dollars up to fifty million dollars shall be allocated as follows: (A) Ten percent to the habitat conservation account; (B) ten percent to the outdoor recreation account; (C) forty percent to the riparian protection account; and (D) forty percent to the farmlands preservation account; and (iii) any amounts over fifty million dollars must be allocated as follows: (A) Thirty percent to the habitat conservation account; (B) thirty percent to the outdoor recreation account; (C) thirty percent to the riparian protection account; and (D) ten percent to the farmlands preservation account.

(2) Except as otherwise provided in chapter 303, Laws of 2005, moneys deposited in these accounts shall be invested as

SEVENTY-NINTH DAY, MARCH 31, 2009

authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts shall be allocated as provided under RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130 as grants to state or local agencies or nonprofit nature conservancy organizations or associations for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The board may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter. Moneys appropriated to these accounts that are not obligated to a specific project may be used to fund projects from lists of alternate projects from the same account in biennia succeeding the biennium in which the moneys were originally appropriated.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public.

(5) The board may make grants to an eligible project from the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts and any one or more of the applicable categories under such accounts described in RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130.

(6) The board may accept private donations to the habitat conservation account, the outdoor recreation account, the riparian protection account, and the farmlands preservation account for the purposes specified in this chapter.

(7) The board may apply up to three percent of the funds appropriated for this chapter for its office for the administration of the programs and purposes specified in this chapter.

(8) Habitat and recreation land and facilities acquired or developed with moneys appropriated for this chapter may not, without prior approval of the board, be converted to a use other than that for which funds were originally approved. The board shall adopt rules and procedures governing the approval of such a conversion.

Sec. 3. RCW 79A.15.060 and 2007 c 241 s 31 are each amended to read as follows:

(1) The board may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) ~~(Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of critical habitat and urban wildlife habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (5) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where critical habitat or urban wildlife habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.~~

~~(5))~~ The board may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

~~((7))~~ (5) In determining acquisition priorities with respect to the habitat conservation account, the board shall consider, at a minimum, the following criteria:

(a) For critical habitat and natural areas proposals:

(i) Community support for the project;

(ii) The project proposal's ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(iii) Recommendations as part of a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort, and for projects primarily intended to benefit salmon, limiting factors, or critical pathways analysis;

(iv) Immediacy of threat to the site;

(v) Uniqueness of the site;

(vi) Diversity of species using the site;

(vii) Quality of the habitat;

(viii) Long-term viability of the site;

(ix) Presence of endangered, threatened, or sensitive species;

(x) Enhancement of existing public property;

(xi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(xii) Educational and scientific value of the site;

(xiii) Integration with recovery efforts for endangered, threatened, or sensitive species;

(xiv) For critical habitat proposals by local agencies, the statewide significance of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

(i) Population of, and distance from, the nearest urban area;

(ii) Proximity to other wildlife habitat;

(iii) Potential for public use; and

(iv) Potential for use by special needs populations.

~~((7))~~ (6) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

Sec. 4. RCW 79A.15.120 and 2007 c 241 s 37 are each amended to read as follows:

(1) The riparian protection account is established in the state treasury. The board must administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board.

(2) Moneys appropriated for this chapter to the riparian protection account must be distributed for the acquisition or enhancement or restoration of riparian habitat. All enhancement or restoration projects, except those qualifying under subsection ~~((10))~~ (9)(a) of this section, must include the acquisition of a real property interest in order to be eligible.

(3) State and local agencies and lead entities under chapter 77.85 RCW, nonprofit nature conservancy organizations or associations, and the conservation commission may apply for acquisition and enhancement or restoration funds for riparian habitat projects under subsection (1) of this section. Other state agencies not defined in RCW 79A.15.010, such as the department of transportation and the department of corrections, may enter into interagency agreements with state agencies to apply in partnership for funds under this section.

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

(4) The board may adopt rules establishing acquisition policies and priorities for distributions from the riparian protection account.

(5) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(6) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

~~(7) (Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of riparian habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (8) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where riparian habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.~~

~~(8))~~ The board may not approve a local project where the local agency or nonprofit nature conservancy organization or association share is less than the amount to be awarded from the riparian protection account. In-kind contributions, including contributions of a real property interest in land may be used to satisfy the local agency's or nonprofit nature conservancy organization's or association's share.

~~((9))~~ (8) State agencies receiving grants for acquisition of land under this section must pay an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due.

~~((10))~~ (9) In determining acquisition priorities with respect to the riparian protection account, the board must consider, at a minimum, the following criteria:

(a) Whether the project continues the conservation reserve enhancement program. Applications that extend the duration of leases of riparian areas that are currently enrolled in the conservation reserve enhancement program shall be eligible. Such applications are eligible for a conservation lease extension of at least twenty-five years of duration;

(b) Whether the projects are identified or recommended in a watershed planning process under chapter 247, Laws of 1998, salmon recovery planning under chapter 77.85 RCW, or other local plans, such as habitat conservation plans, and these must be highly considered in the process;

(c) Whether there is community support for the project;

(d) Whether the proposal includes an ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(e) Whether there is an immediate threat to the site;

(f) Whether the quality of the habitat is improved or, for projects including restoration or enhancement, the potential for restoring quality habitat including linkage of the site to other high quality habitat;

(g) Whether the project is consistent with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local

comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(h) Whether the site has educational or scientific value; and

(i) Whether the site has passive recreational values for walking trails, wildlife viewing, or the observation of natural settings.

~~((11))~~ (10) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of projects to be funded under this section. The governor may remove projects from the list recommended by the board and will submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement.

Sec. 5. RCW 79A.15.130 and 2007 c 241 s 38 are each amended to read as follows:

(1) The farmlands preservation account is established in the state treasury. The board will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city ~~((or))~~, county, nonprofit nature conservancy organization or association, or the conservation commission acquires a property through this program in fee simple, the city ~~((or))~~, county, nonprofit nature conservancy organization or association, or the conservation commission shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city ~~((or))~~, county, nonprofit nature conservancy organization or association, or the conservation commission shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

(3) Cities ~~((and))~~, counties, nonprofit nature conservancy organizations or associations, and the conservation commission may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of this section.

(4) The board may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county ~~((or))~~, city, nonprofit nature conservancy organization or association, or the conservation commission does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction.

(6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a city ~~((or))~~, county, nonprofit nature conservancy organization or

SEVENTY-NINTH DAY, MARCH 31, 2009

association, or the conservation commission to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The board may not approve a local project where the local agency's or nonprofit nature conservancy organization's or association's share is less than the amount to be awarded from the farmlands preservation account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's or nonprofit nature conservancy organization's or association's share.

(9) In determining the acquisition priorities, the board must consider, at a minimum, the following criteria:

- (a) Community support for the project;
- (b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;
- (c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;
- (d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;
- (e) Benefits to salmonids;
- (f) Benefits to other fish and wildlife habitat;
- (g) Integration with recovery efforts for endangered, threatened, or sensitive species;
- (h) The viability of the site for continued agricultural production, including, but not limited to:
 - (i) Soil types;
 - (ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;
 - (iii) Suitability for producing different types or varieties of crops;
 - (iv) Farm-to-market access;
 - (v) Water availability; and
 - (i) Other community values provided by the property when used as agricultural land, including, but not limited to:
 - (i) Viewshed;
 - (ii) Aquifer recharge;
 - (iii) Occasional or periodic collector for storm water runoff;
 - (iv) Agricultural sector job creation;
 - (v) Migratory bird habitat and forage area; and
 - (vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the board will require the projects to meet the following criteria:

- (a) Enhancement or restoration projects must further the ecological functions of the farmlands;
- (b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;
- (c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and
- (d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

(11) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of all projects to be funded under this section. The governor may remove projects from the list recommended by the board and must submit this amended list in the capital budget request to

the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement.

Sec. 6. RCW 84.34.250 and 1975-'76 2nd ex.s. c 22 s 4 are each amended to read as follows:

As used in RCW 84.34.210, as now or hereafter amended, ~~((and))~~ RCW 84.34.220, as now or hereafter amended, and RCW 79A.15.010, "nonprofit nature conservancy corporation or association" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c) (of the Internal Revenue Code) as it exists on June 25, 1976 and one which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of open spaces, including but not limited to wildlife habitat to be utilized as public access areas, for the use and enjoyment of the general public.

NEW SECTION. Sec. 7. (1) Within existing funds, the recreation and conservation office must evaluate the use of land preservation mechanisms such as fee simple acquisitions, conservation easements, term conservation easements, and leases and the ability of each to respond to future economic, social, and environmental changes. The recreation and conservation office must compare the relative advantages and disadvantages and costs of each of these land preservation mechanisms. The recreation and conservation office must report its findings and recommendations to the appropriate committees of the legislature by January 1, 2010.

(2) This section expires June 30, 2010."

Senator Jacobsen spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Natural Resources, Ocean & Recreation to Substitute House Bill No. 1957.

The motion by Senator Jacobsen carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "program;" strike the remainder of the title and insert "amending RCW 79A.15.010, 79A.15.030, 79A.15.060, 79A.15.120, 79A.15.130, and 84.34.250; creating a new section; and providing an expiration date."

MOTION

On motion of Senator Jacobsen, the rules were suspended, Substitute House Bill No. 1957 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1957 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1957 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 35; Nays, 13; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr,

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoeler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Becker, Brandland, Carrell, Delvin, Hatfield, Hewitt, Holmquist, Honeyford, King, McCaslin, Pflug, Roach and Stevens

Excused: Senator Benton

SUBSTITUTE HOUSE BILL NO. 1957 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2160, by House Committee on Health Care & Wellness (originally sponsored by Representatives Driscoll, Hinkle, Cody, Bailey, Kelley, Wood and Morrell)

Concerning health carrier payment of wellness incentives.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 48.30.140 and 2008 c 217 s 35 are each amended to read as follows:

(1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed insurance producer, or title insurance agent for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance producer, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the insurance producer's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, insurance producers, or title insurance agents whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to an insurance producer as provided in RCW 48.17.270.

(6)(a) Subsection (1) of this section shall not be construed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract containing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health

insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW 48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 CFR 146.121(f).

Sec. 2. RCW 48.30.150 and 2008 c 217 s 36 are each amended to read as follows:

(1) No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

~~((+))~~ (a) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

~~((2))~~ (b) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

~~((3))~~ (c) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

(2) Subsection (1) of this section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold.

(3)(a) Subsection (1) of this section shall not be deemed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract providing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW 48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 CFR 146.121(f).

NEW SECTION. Sec. 3. A new section is added to chapter 48.43 RCW to read as follows:

Upon the renewal date of an individual or group health benefit plan or contract containing health benefits, the modification of a wellness program, as defined in 45 CFR 146.121(f), included in such a plan or contract shall not be considered a cancellation or nonrenewal of such plan or contract."

Senator Keiser spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care to Substitute House Bill No. 2160.

The motion by Senator Keiser carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "incentives;" strike the remainder of the title and insert "amending RCW 48.30.140 and 48.30.150; and adding a new section to chapter 48.43 RCW."

MOTION

SECOND READING

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 2160 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2160 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2160 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

SUBSTITUTE HOUSE BILL NO. 2160 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE JOINT MEMORIAL NO. 4014, by Representatives Kessler, DeBolt and Orcutt

Requesting that House Resolution 6922 or substantially similar legislation be enacted to help stabilize the trucking industry.

The measure was read the second time.

MOTION

On motion of Senator Jarrett, the rules were suspended, House Joint Memorial No. 4014 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Jarrett spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Joint Memorial No. 4014.

ROLL CALL

The Secretary called the roll on the final passage of House Joint Memorial No. 4014 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

HOUSE JOINT MEMORIAL NO. 4014, having received the constitutional majority, was declared passed.

ENGROSSED HOUSE BILL NO. 1049, by Representatives Rolfes, Angel, Kelley, Smith, Conway, Hope, Hunt, Dammeier, Dunshee, Herrera, Seaquist, Armstrong, Moeller, Parker, Van De Wege, Johnson, Simpson, Rodne, Orwall, Haler, Lias, Short, Kirby, Green, Kenney, Goodman, Williams, Dickerson, McCoy, Appleton, Chase, Morrell, Sullivan, Sells, Newhouse, Upthegrove, Kessler, Roach, Wallace, Bailey, Maxwell, McCune, Kretz, Condotta and Campbell

Concerning veterans' relief.

The measure was read the second time.

MOTION

On motion of Senator Kilmer, the rules were suspended, Engrossed House Bill No. 1049 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kilmer spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1049.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1049 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

ENGROSSED HOUSE BILL NO. 1049, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1055, by House Committee on Commerce & Labor (originally sponsored by Representatives Moeller, Williams, Conway, Wood and Simpson)

Requiring workers to have licenses, certificates, or permits in their possession when performing work in certain construction trades.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 1055 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kohl-Welles spoke in favor of passage of the bill.

Senator Holmquist spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1055.

ROLL CALL

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

The Secretary called the roll on the final passage of Substitute House Bill No. 1055 and the bill passed the Senate by the following vote: Yeas, 33; Nays, 15; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Brandland, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Parlette, Pflug, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Excused: Senator Benton

SUBSTITUTE HOUSE BILL NO. 1055, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1218, by Representatives Goodman, Klippert, O'Brien, Ross, Simpson and Williams

Changing the requirement that contempt of court sanctions be served in the county jail.

The measure was read the second time.

MOTION

On motion of Senator Kline, the rules were suspended, House Bill No. 1218 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1218.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1218 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

HOUSE BILL NO. 1218, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1322, by Representatives Green, Morrell, Hinkle, Kirby, Kelley, Moeller, Blake, Seaquist, Rolfes, Cody and Simpson

Repealing scoliosis screening in schools.

The measure was read the second time.

MOTION

On motion of Senator McAuliffe, the rules were suspended, House Bill No. 1322 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1322.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1322 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Carrell, Holmquist and Roach

Excused: Senator Benton

HOUSE BILL NO. 1322, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1414, by House Committee on Health Care & Wellness (originally sponsored by Representatives Driscoll, Moeller, Hinkle, Cody, Sullivan, Nelson and Ormsby)

Concerning health care assistants.

The measure was read the second time.

MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 1414 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1414.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1414 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

SUBSTITUTE HOUSE BILL NO. 1414, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SEVENTY-NINTH DAY, MARCH 31, 2009
SECOND READING

2009 REGULAR SESSION

SUBSTITUTE HOUSE BILL NO. 1749, by House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Bailey and Kirby)

Regulating the business practices of mortgage brokers for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

The measure was read the second time.

MOTION

Senator Berkey moved that the following committee striking amendment by the Committee on Financial Institutions, Housing & Insurance be adopted.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 19.146.010 and 2008 c 78 s 3 are each amended to read as follows:

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.

(3) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(4) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(5) "Department" means the department of financial institutions.

(6) "Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(7) "Director" means the director of financial institutions.

(8) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(9) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(10) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

~~((+0))~~ (11)(a) "Loan originator" means a natural person who ~~((+))~~ for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application for a mortgage broker, or ~~((+))~~ (ii) offers or negotiates terms of a mortgage loan ~~(-for direct or indirect compensation or gain, or in the expectation of~~

~~direct or indirect compensation or gain~~). "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

~~((+))~~ (b) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (b)(i) through (iv) of this subsection.

(c) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

~~((+2))~~ (14) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

~~((+3))~~ (15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

~~((+4))~~ (18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

~~((+5))~~ (19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

~~((+6))~~ (20) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(21) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(22) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 2. RCW 19.146.020 and 2006 c 19 s 3 are each amended to read as follows:

(1) ~~(Except as provided under subsections (2) through (4) of this section,)~~ The following are exempt from all provisions of this chapter:

(a) ~~((+))~~ Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof ~~(, and~~

~~(ii) Subject to the director's written approval, the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank);~~

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

~~(e) ((Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;~~

~~(f)) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;~~

~~((g) Any mortgage broker approved and subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation;~~

~~(h)) (f) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1) ~~((+))~~ (f); ~~((and~~~~

~~(i)) (g) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly~~

with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1);

~~(h) Registered mortgage loan originators, or any individual required to be registered; and~~

~~(i) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.~~

~~(2) ((Those persons and their loan originators otherwise exempt under subsection (1)(c), (g), or (4) of this section must comply with RCW 19.146.0201 through 19.146.080. For violations of RCW 19.146.0201 through 19.146.080, the director has authority to issue a cease and desist order as provided in RCW 19.146.220 and 19.146.227, to impose penalties as provided in RCW 19.146.220, and to obtain and review books and records that are relevant to any allegation of such a violation as provided in RCW 19.146.235.~~

~~(3)) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.~~

(a) Upon receipt of a license under this subsection, the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter.

~~((4) The director may exempt an exclusive agent under subsection (1)(a) of this section provided that the affiliate in subsection (1)(a) of this section:~~

~~(a) Applies for and maintains a license as provided by subsection (3) of this section;~~

~~(b) Has on file with the director a binding written agreement under which the affiliate assumes responsibility for the exclusive agent's violations of this chapter or rules adopted under this chapter; and~~

~~(c) Maintains a bond or other security in an amount required by the director that runs to the benefit of the state and any person who suffers loss by reason of the exclusive agent's violation of this chapter or rules adopted under this chapter.))~~

Sec. 3. RCW 19.146.0201 and 2006 c 19 s 4 are each amended to read as follows:

It is a violation of this chapter for a loan originator ~~(,)~~ or mortgage broker required to be licensed under this chapter ~~(, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1)(c), (g), or (4))~~ to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (~~((g) or (h))~~) (f) or a lender with whom the mortgage broker maintains a written correspondent or loan broker agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(11) Fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 C.F.R. Part 310, as these acts existed on January 1, 2007, or such subsequent date as may be provided by the department by rule, in any advertising of residential mortgage loans, or any other applicable mortgage broker or loan originator activities covered by the acts. The department may adopt by rule requirements that mortgage brokers and loan originators comply with other applicable federal statutes and regulations in any advertising of residential mortgage loans, or any other mortgage broker or loan originator activity;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, act as a loan originator in any transaction (i) in

which the loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage services to the borrower, a loan originator, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage broker business activities and shall maintain such person's mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the broker business firms results. This subsection (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

Sec. 4. RCW 19.146.205 and 2006 c 19 s 10 are each amended to read as follows:

(1) Application for a mortgage broker license under this chapter (~~shall~~) must be ((in writing)) made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) As a part of or in connection with an application for any license under this section, or periodically upon license renewal, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, ~~((and))~~ 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, 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 through the nationwide mortgage licensing system and registry the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

~~((4))~~ (6)(a) Except as provided in (b) of this subsection, each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount ((of not greater than sixty thousand dollars nor less than twenty thousand dollars)) which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director ((may)) shall take the form of a ((uniform bond amount for all licensees or the director may establish by rule a schedule establishing a)) range of bond amounts which shall vary according to the annual ((average number of loan originators of a)) loan origination volume of the licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by

this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) ~~((Subsection (4)(b) and (c) of this section applies only to applications received on or before January 1, 2007. Before January 1, 2007, in lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.~~

~~(c) Before January 1, 2007, in lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection)) If the director determines that the bond required in (a) of this subsection is not reasonably available, the director shall waive the requirements for such a bond. The mortgage recovery fund account is created in the custody of the state treasurer. The director is authorized to charge fees to fund the account. All fees charged under this section, except those retained by the director for administration of the fund, must be deposited into the mortgage recovery fund account. Expenditures from the account may be used only for the same purposes as the surety bond as described in (a) of this subsection. 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. A person entitled to receive payment from the mortgage recovery fund may only receive reimbursement after a court of competent jurisdiction has determined the actual damages caused by the licensee. The director may determine by rule the procedure for recovery; the amount each mortgage broker must pay through the nationwide mortgage licensing system and registry for deposit in the~~

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

mortgage recovery fund; and the amount necessary to administer the fund.

Sec. 5. RCW 19.146.228 and 2006 c 19 s 15 are each amended to read as follows:

The director shall establish fees ~~((by rule in accordance with the policy established in RCW 43.24.086 and fees shall be))~~ sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers and loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker or loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

Sec. 6. RCW 19.146.235 and 2006 c 19 s 16 are each amended to read as follows:

The director or a designee has authority to conduct investigations and examinations as provided in this section.

(1) For the purposes of investigating violations or complaints arising under this chapter, the director or his or her designee may make an investigation of the operations of any mortgage broker or loan originator as often as necessary in order to carry out the purposes of this chapter.

(2) Every mortgage broker shall make available to the director or a designee its books and records relating to its operations.

(a) For the purpose of examinations, the director or his or her designee may have access to such books and records during normal business hours and interview the officers, principals, loan originators, employees, independent contractors, and agents of the licensee concerning their business.

(b) For the purposes of investigating violations or complaints arising under this chapter, the director may at any time, either personally or by a designee, investigate the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person acts or claims to act under, or without the authority of, this chapter.

(c) The director or designated person may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry.

~~(3) ((Once during the first five years of licensing, including branch licensing.))~~ The director may visit, either personally or by designee, the licensee's place or places of business to conduct an examination. The scope of the examination is limited to documents and information necessary to determine compliance with this chapter and attendant rules. In general, the examination scope may include:

(a) A review for trust accounting compliance;

(b) Loan file review to determine the mortgage broker's compliance with this chapter and applicable federal regulations covering the business of mortgage brokering and lending;

(c) Interviews for the purpose of understanding business and solicitation practices, transactional events, disclosure compliance, complaint resolution, or determining specific compliance with this chapter and the attendant rules; and

(d) A review of general business books and records, including employee records, for the purpose of determining specific compliance with this chapter and the attendant rules.

(4) The purpose of an examination is to make certain that licensees are conducting business in compliance with the law. Therefore, protocols for examination findings and corrective action directed from an examination must be established by rule of the director. To accomplish this purpose, these protocols must include the following:

(a) A reporting mechanism from the director to the licensee;

(b) A process for clear notification of violations and an opportunity for response by the licensee; and

(c) The criteria by which the frequency of examinations will be determined.

(5) If the examination findings clearly identify the need to expand the scope of the examination, the director or a designee, upon five days' written notification to the licensee with an explanation of the need, may:

(a) Expand the examination review to locations other than the examined location regardless of the number of years a location has held a license; or

(b) Expand the time period of the examination beyond the five-year period of licensing, provided the expansion of time does not exceed a date certain identified in the written notification in this subsection.

(6) The director or a designee may consider reports made by independent certified professionals for the mortgage broker covering the same general subject matter as the examination. The director or a designee may incorporate all or part of the report in the report of the examination.

(7) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations. The cost of these services for investigations only must be billed in accordance with RCW 19.146.228.

(8) The director may establish by rule travel costs for examination of out-of-state entities.

(9)(a) No person subject to examination or investigation under this chapter may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(b) A person who commits an act under (a) of this subsection is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than twenty thousand dollars, or both.

NEW SECTION. Sec. 7. A new section is added to chapter 19.146 RCW to read as follows:

(1) Each loan originator applicant shall complete at least twenty hours of prelicensing education approved by the nationwide mortgage licensing system and registry. The prelicensing education shall include at least three hours of federal law and regulations; three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; two hours of training related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) A loan originator applicant having successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

(3) This chapter does not preclude any prelicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such an employer or entity. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

NEW SECTION. Sec. 8. A new section is added to chapter 19.146 RCW to read as follows:

(1) To obtain a loan originator license, an individual must pass a test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

(2) An individual is not considered to have passed a test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(a) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(b) After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(c) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer must retake the test, not taking into account any time during which that individual is a registered mortgage loan originator.

(3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the loan originator applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

Sec. 9. RCW 19.146.300 and 2006 c 19 s 19 are each amended to read as follows:

(1) Application for a loan originator license under this chapter ~~((shall))~~ must be ((in writing)) made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the loan originator applicant, unless waived by the director; and

(b) Such other information regarding the loan originator applicant's background, experience, character, and general fitness as the director may require by rule.

(2)(a) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, ~~((and))~~ 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.

(b) 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.

(c) 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.

(d) As part of or in connection with an application for a license under this section, the loan originator applicant must furnish to the nationwide mortgage licensing system and registry personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) At the time of filing an application for a license under this chapter, each loan originator applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 19.146.228 to cover the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund.

(4) The director must establish by rule procedures for accepting and processing incomplete applications.

Sec. 10. RCW 19.146.310 and 2006 c 19 s 20 are each amended to read as follows:

(1) The director shall issue and deliver a loan originator license if, after investigation, the director makes the following findings:

(a) The loan originator applicant has paid the required license fees;

(b) The loan originator applicant has met the requirements of RCW 19.146.300 ;

(c) The loan originator applicant has ~~((not))~~ never had a license issued under this chapter or any similar state statute ~~((suspended or))~~ revoked ((within five years of the filing of the present application)) except that, for the purposes of this subsection, a subsequent formal vacation of a revocation is not a revocation;

(d)(i) The loan originator applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or ((a felony)) has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court within seven years of the filing of the present application; and

(ii) The loan originator applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court at any time preceding the date of application if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The loan originator applicant has passed a written examination whose content shall be established by rule of the director;

(f) The loan originator applicant has not been found to be in violation of this chapter or rules;

(g) The loan originator applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly and fairly within the purposes of this chapter. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years; and

(h) The loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, a minimum of eight hours of continuing education as established by rule of the director. ((The director shall establish standards in rule for approval of professional organizations offering continuing education to loan originators. The director may approve continuing education taken by loan originators in other states if the director is satisfied that such continuing education meets the requirements of the continuing education required by this chapter.))

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the loan originator license. The director shall notify the loan originator applicant of the denial and return to the loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a new loan originator license under this chapter to any licensee that has a valid license and is otherwise in compliance with this chapter.

(4) A loan originator license issued under this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall establish rules regarding the loan originator license renewal process created under this chapter.

(5) A loan originator licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a loan originator license and to facilitate the business of a loan originator, an interim loan originator license with a fixed date of expiration may be issued when the director determines that the loan originator has substantially fulfilled the requirements for loan originator licensing as defined by rule.

NEW SECTION. Sec. 11. A new section is added to chapter 19.146 RCW to read as follows:

(1) A licensed mortgage loan originator must complete a minimum of eight hours of continuing education, eight of which is approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) The nationwide mortgage licensing system and registry must review and approve continuing education courses. Review and approval of a continuing education course must include review and approval of the course provider.

(3) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual

continuing education requirement at the rate of two hours credit for every one hour taught.

(5) A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry for any state must have their credits accepted as credit towards completion of continuing education requirements in this state.

(6) This section does not preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

NEW SECTION. Sec. 12. A new section is added to chapter 19.146 RCW to read as follows:

The director shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director.

NEW SECTION. Sec. 13. A new section is added to chapter 19.146 RCW to read as follows:

For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

NEW SECTION. Sec. 14. A new section is added to chapter 31.04 RCW to read as follows:

An individual defined as a mortgage loan originator shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

NEW SECTION. Sec. 15. A new section is added to chapter 19.146 RCW to read as follows:

(1) Except as otherwise provided in section 1512 of the S.A.F.E. act, the requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, 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 nationwide mortgage licensing system and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to that information or

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

NEW SECTION. Sec. 16. A new section is added to chapter 19.146 RCW to read as follows:

In order to fulfill the purposes of this act, the director is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

NEW SECTION. Sec. 17. A new section is added to chapter 19.146 RCW to read as follows:

Each mortgage broker licensee shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain the information as the nationwide mortgage licensing system and registry may require.

NEW SECTION. Sec. 18. A new section is added to chapter 19.146 RCW to read as follows:

The director is authorized to regularly report violations of this act, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry.

NEW SECTION. Sec. 19. (1) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 are effective January 1, 2010.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, mortgage loan originators who were previously exempt as exclusive agents under RCW 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license under this chapter before July 1, 2010.

NEW SECTION. Sec. 20. The director of financial institutions or the director's designee may take the actions necessary to ensure this act is implemented on July 1, 2010."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Financial Institutions, Housing & Insurance to Substitute House Bill No. 1749.

The motion by Senator Berkey carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "2008;" strike the remainder of the title and insert "amending RCW 19.146.010, 19.146.020, 19.146.0201, 19.146.205, 19.146.228, 19.146.235, 19.146.300, and 19.146.310; adding new sections to chapter 19.146 RCW; adding a new section to chapter 31.04 RCW; creating new sections; and providing an effective date."

MOTION

On motion of Senator Berkey, the rules were suspended, Substitute House Bill No. 1749 as amended by the Senate was

advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Berkey spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1749 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1749 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

SUBSTITUTE HOUSE BILL NO. 1749 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1843, by House Committee on Transportation (originally sponsored by Representatives Kagi, Rodne and Kenney)

Addressing motor carrier regulation and compliance review.

The measure was read the second time.

MOTION

On motion of Senator Jarrett, the rules were suspended, Substitute House Bill No. 1843 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jarrett and Swecker spoke in favor of passage of the bill.

MOTION

On motion of Senator Brandland, Senator Holmquist was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1843.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1843 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 6; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Carrell, Holmquist, Honeyford, McCaslin, Morton and Schoesler

Excused: Senator Benton

SEVENTY-NINTH DAY, MARCH 31, 2009

SUBSTITUTE HOUSE BILL NO. 1843, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1878, by Representatives Jacks, Driscoll, Maxwell, Wallace, Quall, Green, Darneille, Moeller and Kenney

Authorizing the transfer of accumulated leave of employees of the state school for the blind and the school for the deaf.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 1878 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1878.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1878 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Jarrett, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Benton

HOUSE BILL NO. 1878, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 10:55 a.m., on motion of Senator Eide, the Senate adjourned until 9:00 a.m. Wednesday, April 1, 2009.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

1049	Second Reading.	10
	Third Reading Final Passage.	10
1055-S	Second Reading.	10
	Third Reading Final Passage.	11
1218	Second Reading.	11
	Third Reading Final Passage.	11
1221-S	Second Reading.	3
	Third Reading Final Passage.	3
1280-S	Second Reading.	3

SEVENTY-NINTH DAY, MARCH 31, 2009

2009 REGULAR SESSION

1291-S
 Third Reading Final Passage. 3
 Second Reading. 3
 Third Reading Final Passage. 4

1322
 Second Reading. 11
 Third Reading Final Passage. 11

1414-S
 Second Reading. 11
 Third Reading Final Passage. 11

1433
 Other Action. 4
 Second Reading. 4
 Third Reading Final Passage. 4

1580-S2
 Second Reading. 4, 5
 Third Reading Final Passage. 5

1749-S
 Other Action. 19
 Second Reading. 12
 Third Reading Final Passage. 19

1843-S
 Second Reading. 19
 Third Reading Final Passage. 19

1878
 Second Reading. 20
 Third Reading Final Passage. 20

1957-S
 Other Action. 8
 Second Reading. 5
 Third Reading Final Passage. 8

2160-S
 Other Action. 9
 Second Reading. 9
 Third Reading Final Passage. 10

4014
 Second Reading. 10
 Third Reading Final Passage. 10

5012-S
 Messages. 1

5030-S
 Messages. 1

5035-S
 Messages. 1

5043-S
 Messages. 1

5055-S
 Messages. 1

5131-S
 Messages. 1

5135-S
 Messages. 1

5156
 Messages. 1

5184
 Messages. 1

5190-S
 Messages. 1

5228-S
 Messages. 1

5238-S
 Messages. 1

5261-S
 Messages. 1

5290-S
 Messages. 1

5352
 Committee Report. 1

6146

Introduction & 1st Reading. 1

9004 Mike Amos
 Confirmed. 2

9031 Timothy B. Douglas
 Confirmed. 2

9042 Judy L. Hartman
 Confirmed. 3

9087 Erin Mundinger
 Confirmed. 2

9100 Erik S. Rohrer
 Confirmed. 1

