Title 11
PROBATE AND TRUST LAW

Chapters

Rules of court:
compensation, reports: SPR 98.12W.
guardians, receivers, personal representatives compromise and settlement: SPR 98.08W.
receivers, reports by: SPR 98.10W.

Cemetery plots, inheritance: Chapter 68.32 RCW.

Community property agreements: Chapter 26.16 RCW.

Coroner's duty as to property of deceased: RCW 36.24.130, 36.24.180.

Court commissioners, powers in probate matters: RCW 2.24.040.

Donation of human remains for medical purposes: Chapter 68.50 RCW.

Evidence, transaction with person since deceased: RCW 5.60.030.

Fees, collection by superior court clerk: RCW 27.24.070, 36.18.020.

Joint tenancy: Chapter 64.28 RCW.

Jurisdiction: RCW 2.08.010, 2.08.190; State Constitution Art. 4 §§ 4 and 6 (Amendment 28).

Life insurance payable to trustee named as beneficiary in policy or will: RCW 48.18.450, 48.18.452.

Partition of real property: Chapter 7.52 RCW.

Production of pretended heir: Chapter 9A.60 RCW.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Stock certificates—Joint tenancy—Transfer pursuant to direction of survivor: RCW 23B.07.240.

Veterans' estates, appointment of director of veterans' affairs to act as executor, administrator or guardian: RCW 73.04.130.

Wages
payment on death of employee: RCW 49.48.120.
preference on death of employer: RCW 49.56.020.

Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.

Chapter 11.02
GENERAL PROVISIONS

Sections

11.02.001 Section headings in Title 11 RCW not part of law. Section headings, as found in Title 11 RCW, do not constitute any part of the law. [1985 c 30 § 3. Prior: 1984 c 149 § 179.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.02.005 Definitions and use of terms. When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of the intestate's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020 and includes all codicils.

(9) "Codicil" means an instrument that is validly executed in the manner provided by this title for a will and that refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) Words that import the singular number may also be applied to the plural of persons and things.

(16) Words importing the masculine gender only may be extended to females also. [1985 c 30 § 4. Prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 1965 c 145 § 11.02.005. Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—1984 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 149 § 181.]

Effective dates—1984 c 149: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984], except sections 1 through 98, 100 through 138, and 147 through 178 of this act which shall take effect January 1, 1985." [1984 c 149 § 180.] For codification of 1984 c 149 see Codification Tables, Volume 0.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Effect of decree of adoption: RCW 26.33.260.

Kindred of the half blood: RCW 11.04.035.

11.02.070 Community property—Disposition—Probate administration of. Upon the death of a decedent, a one-half share of the community property shall be confirmed to the surviving spouse, and the other one-half share shall be subject to testamentary disposition by the decedent, or shall descend as provided in chapter 11.04 RCW. The whole of the community property shall be subject to probate administration for all purposes of this title, including the payment of obligations and debts of the community, the award in lieu of homestead, the allowance for family support, and any other matter for which the community property would be responsible or liable if the decedent were living. [1967 c 168 § 1.]

Effective date—1967 c 168: "The provisions of this act shall take effect on July 1, 1967." [1967 c 168 §§ 16, 19.] For codification of 1967 c 168, see Codification Tables, Volume 0.

Descent and distribution of community property: RCW 11.04.015(1).

Disposition of quasi-community property: RCW 26.16.230.

11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights, and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117. On and after October 1, 1974:

(1) The provisions of *this 1974 amendatory act shall apply to any wills of decedents dying thereafter;

(2) The provisions of *this 1974 amendatory act shall apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of *this 1974 amendatory act;

(3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on October 1, 1974, continues to hold the appointment, has the powers conferred by *this 1974 amendatory act and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) An act done before October 1, 1974 in any proceeding and any accrued right is not impaired by *this 1974 amendatory act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before October 1, 1974, the provisions shall remain in force with respect to that right;

(5) Any rule of construction or presumption provided in *this 1974 amendatory act applies to instruments executed before October 1, 1974 unless there is a clear indication of a contrary intent. [1974 ex.s. c 117 § 1.]

***Reviser's note:** "this 1974 amendatory act" [1974 ex.s. c 117] consists of RCW 11.02.080, 11.02.090, 11.28.131, 11.28.185, 11.28.330, 11.28.340, 11.44.066, 11.62.010, 11.62.020, 11.68.050, 11.68.060, 11.68.070, 11.68.080, 11.68.090, 11.68.100, 11.68.110, 11.68.120, 11.94.010, 11.94.020; amendments to RCW 11.04.015, 11.12.120, 11.20.020, 11.28.010, 11.28.070, 11.28.110, 11.28.237, 11.28.280, 11.40.010, 11.40.020, 11.40.030, 11.40.040, 11.40.060, 11.40.100, 11.40.110, 11.44.025, 11.44.070, 11.52.010, 11.52.012, 11.52.020, 11.52.022, 11.68.010, 11.68.020, 11.68.030, 11.68.040, 11.76.080, 11.76.090, 11.76.095, 30.04.260, 30.20.020, 32.12.020, 33.20.080, and 49.48.120; and the repeal of RCW 11.28.130, 11.28.180, 11.28.200, 11.40.050, 11.44.055, 11.44.065, and 11.44.080.

Legislative directive—Part headings not part of law: "(1) Sections 4 and 5 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(2) Sections 52 and 53 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(3) Part headings employed in this 1974 amendatory act do not constitute any part of the law and shall not be codified by the code reviser and shall not become a part of the Revised Code of Washington." [1974 ex.s. c 117 § 2.]

Reviser's note: (1) "Sections 4 and 5 of this 1974 amendatory act" are codified as RCW 11.62.010 and 11.62.020.

(2) "Sections 52 and 53 of this 1974 amendatory act" are codified as RCW 11.94.010 and 11.94.020.

Severability—1974 ex.s. c 117: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 117 § 3.]

Effective date—1974 ex.s. c 117: "This 1974 amendatory act shall take effect October 1, 1974." [1974 ex.s. c 117 § 56.]

11.02.090 Certain provisions of written instruments deemed nontestamentary—Creditors' rights—Safety deposit repository leases. (1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, joint tenancy, community property agreement, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this title does not invalidate the instrument or any provision:

(a) That money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(c) That any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

(3) Any provision in a lease of a safety deposit repository to the effect that two or more persons shall have access to the repository, or that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee, is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor. Ownership of the contents of the repository and devolution of title to those contents is determined according to rules of law without regard to the lease provisions. [1974 ex.s. c 117 § 54.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.02.100 Transfer of shares of record—Dividends. Shares of record in the name of a married person may be transferred by such person, such person's agent or attorney, without the signature of such person's spouse. All dividends payable upon any shares of a corporation standing in the name of a married person, shall be paid to such married person, such person's agent or attorney, in the same manner as if such person were unmarried, and it shall not be necessary for the other spouse to join in a receipt therefor; and any proxy or power given by a married person, touching any shares of any corporation standing in such person's name, shall be valid and binding without the signature of the other spouse. [1990 c 180 § 7.]

11.02.110 Transfer of shares or securities—Presumption of joint tenancy. Whenever shares or other securities issued by domestic or foreign corporations are or have been issued or transferred to two or more persons in joint tenancy form on the books or records of the corporation, it is presumed in favor of the corporation, its registrar and its transfer agent that the shares or other securities are owned by such persons in joint tenancy and not otherwise. A domestic or foreign corporation or its registrar or transfer agent is not liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving joint tenant or tenants any share or shares or other securities theretofore issued by the corporation to two or more persons in joint tenancy form on the books or records of the corporation, unless the transfer was made with actual knowledge by the corporation or by its registrar or transfer agent of the existence of any understand-

ing, agreement, condition, or evidence that the shares or securities were held other than in joint tenancy, or of the invalidity of the joint tenancy or a breach of trust by the joint tenants. [1990 c 180 § 8.]

11.02.120 Transfer of shares—Liability. Neither a domestic or foreign corporation or its registrar or transfer agent shall be liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving spouse of a deceased husband or wife any share or shares or other securities theretofore issued by the corporation to the deceased or surviving spouse or both of them if the corporation or its registrar or transfer agent shall be provided with the following:

(1) A copy of an agreement which shall have been entered into between the spouses pursuant to RCW 26.16.120 and certified by the auditor of the county in this state in whose office the same shall have been recorded;

(2) A certified copy of the death certificate of the deceased spouse;

(3) An affidavit of the surviving spouse that:

(a) The shares or other securities constituted community property of the spouses at date of death of the deceased spouse and their disposition is controlled by the community property agreement;

(b) No proceedings have been instituted to contest or set aside or cancel the agreement; and that

(c) The claims of creditors have been paid or provided for. [1990 c 180 § 9.]

11.02.900 Short title—Washington trust act of 1984. Chapter 149, Laws of 1984, as amended and reenacted in chapters 8, 9, 10, 11, 23, 30, and 31, Laws of 1985 shall be known as the Washington trust act of 1984. [1985 c 30 § 2.]

11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. (1) Nothing in chapter 8, 9, 10, 11, 23, 30, or 31, Laws of 1985 shall invalidate or nullify:

(a) Any instrument or property relationship that is executed and irrevocable as of the April 10, 1985; or

(b) Any action undertaken in a proceeding where the action was commenced before April 10, 1985, as long as the instrument, property relationship, or action complies with chapter 149, Laws of 1984.

(2) Except as specifically provided otherwise in chapter 149, Laws of 1984 as amended and reenacted in 1985, chapter 149, Laws of 1984 as amended and reenacted in 1985 shall apply to all instruments, property relationships, and proceedings existing on January 1, 1985. [1985 c 30 § 139.]

11.02.902 Purpose—1985 c 30. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 30 § 1.]

11.02.903 Severability—1985 c 30. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 144.]

Chapter 11.04
DESCENT AND DISTRIBUTION

Sections

Inheritance rights of slayers: Chapter 11.84 RCW.

11.04.015 Descent and distribution of real and personal estate. The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse. The surviving spouse shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandpar-

ents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation. [1974 ex.s. c 117 § 6; 1967 c 168 § 2; 1965 ex.s. c 55 § 1; 1965 c 145 § 11.04.015. Formerly RCW 11.04.020, 11.04.030, 11.04.050.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Appropriation to pay debts and expenses: RCW 11.56.150.

Community property
disposition: RCW 11.02.070.
generally: Chapter 26.16 RCW.

Escheats: Chapter 11.08 RCW.

"Net estate" defined: RCW 11.02.005(2).

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: RCW 11.56.015.

11.04.035 Kindred of the half blood. Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes to the intestate by descent, devise, or gift from one of his ancestors, or kindred of such ancestor's blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance: PROVIDED, HOWEVER, That the words "kindred of such ancestor's blood" and "blood of such ancestors" shall be construed to include any child lawfully adopted by one who is in fact of the blood of such ancestors. [1967 c 168 § 3; 1965 c 145 § 11.04.035. Formerly RCW 11.04.100, part.]

"Degree of kinship" defined: RCW 11.02.005(5).

11.04.041 Advancements. If a person dies intestate as to all his estate, property which he gave in his lifetime as an advancement to any person who, if the intestate had died at the time of making the advancement, would be entitled to inherit a part of his estate, shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement. The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs. If the advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled had he survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement. [1965 c 145 § 11.04.041. Formerly RCW 11.04.040, 11.04.120, 11.04.130, 11.04.140, 11.04.150, 11.04.160, and 11.04.170.]

11.04.060 Tenancy in dower and by curtesy abolished. The provisions of RCW 11.04.015, as to the inheritance of the husband and wife from each other take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished. [1965 c 145 § 11.04.060. Prior: Code 1881 § 3304; 1875 p 55 § 3; RRS § 1343.]

11.04.071 Survivorship as incident of tenancy by the entireties abolished. The right of survivorship as an incident of tenancy by the entireties is abolished. [1965 c 145 § 11.04.071.]

Joint tenancy: Chapter 64.28 RCW.

Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).

11.04.081 Inheritance by and from any child not dependent upon marriage of parents. For the purpose of inheritance to, through, and from any child, the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married. [1975-'76 2nd ex.s. c 42 § 24; 1965 c 145 § 11.04.081. Formerly RCW 11.04.080 and 11.04.090.]

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes all lawfully adopted children: RCW 11.02.005(4).

11.04.085 Inheritance by adopted child. A lawfully adopted child shall not be considered an "heir" of his natural parents for purposes of this title. [1965 c 145 § 11.04.085.]

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes lawfully adopted children: RCW 11.02.005(4).

11.04.095 Inheritance from stepparent avoids escheat. If a person die leaving a surviving spouse and issue by a former spouse and leaving a will whereby all or substantially all of the deceased's property passes to the surviving spouse or having before death conveyed all or substantially all his or her property to the surviving spouse, and afterwards the latter dies without heirs and without disposing of his or her property by will so that except for this section the same would all escheat, the issue of the spouse first deceased who survive the spouse last deceased shall take and inherit from the spouse last deceased the property so acquired by will or conveyance or the equivalent thereof in money or other property; if such issue are all in the same degree of kinship to the spouse first deceased they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such spouse first deceased. [1965 c 145 § 11.04.095. Prior: 1919 c 197 § 1; RCW 11.08.010; RRS § 1356-1.]

11.04.230 United States savings bond—Effect of death of co-owner. If either co-owner of United States

savings bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.230. Prior: 1943 c 14 § 1; Rem. Supp. 1943 § 11548-60.]

11.04.240 United States savings bond—Effect of beneficiary's survival of registered owner. If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.240. Prior: 1943 c 14 § 2; Rem. Supp. 1943 § 11548-61.]

11.04.250 When real estate vests—Rights of heirs. When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his title shall vest immediately in his heirs or devisees, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: PROVIDED, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements, or hereditaments so vested in such heirs or devisees, together with the rents, issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the personal representative when appointed, and persons lawfully claiming under such personal representative; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the personal representative and those lawfully claiming under such personal representative. [1965 c 145 § 11.04.250. Prior: 1895 c 105 § 1; RRS § 1366.]

Right to possession and management of estate: RCW 11.48.020.

11.04.270 Limitation of liability for debts. The estate of a deceased person shall not be liable for his debts unless letters testamentary or of administration be granted within six years from the date of the death of such decedent: PROVIDED, HOWEVER, That this section shall not affect liens upon specific property, existing at the date of the death of such decedent. [1965 c 145 § 11.04.270. Prior: 1929 c 218 § 1; 1895 c 105 § 3; RRS § 1368.]

Limitation of actions, tolling of statute: RCW 4.16.200.

11.04.290 Vesting of title. RCW 11.04.250 through 11.04.290 shall apply to community real property and also to separate estate; and upon the death of either husband or wife, title of all community real property shall vest immediately in the person or persons to whom the same shall go, pass, descend or be devised, as provided in RCW 11.04.015, subject to all the charges mentioned in RCW 11.04.250. [1965 c 145 § 11.04.290. Prior: 1895 c 105 § 5; RRS § 1370.]

Chapter 11.05
UNIFORM SIMULTANEOUS DEATH ACT

Sections

11.05.010 Devolution of property in case of simultaneous death of owners. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter. [1965 c 145 § 11.05.010. Prior: 1943 c 113 § 1; Rem. Supp. 1943 § 1370-1. Formerly RCW 11.04.180.]

11.05.020 Procedure when beneficiaries die simultaneously. Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries. [1965 c 145 § 11.05.020. Prior: 1943 c 113 § 2; Rem. Supp. 1943 § 1370-2. Formerly RCW 11.04.190.]

11.05.030 Joint tenants—Simultaneous death. Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. [1965 c 145 § 11.05.030. Prior: 1943 c 113 § 3; Rem. Supp. 1943 § 1370-3. Formerly RCW 11.04.200.]

Joint tenancy: Chapter 64.28 RCW.

11.05.040 Distribution of insurance policy when insured and beneficiary die simultaneously. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds

of the policy shall be distributed as if the insured had survived the beneficiary. [1965 c 145 § 11.05.040. Prior: 1943 c 113 § 4; Rem. Supp. 1943 § 1370-4. Formerly RCW 11.04.210.]

Reviser's note: The subject matter of this section and RCW 11.05.050 relating to insurance also appears in RCW 48.18.390.

11.05.050 Scope of chapter limited. This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter. [1965 c 145 § 11.05.050. Prior: 1943 c 113 § 6; Rem. Supp. 1943 § 1370-6. Formerly RCW 11.04.220.]

Reviser's note: See note following RCW 11.05.040.

11.05.900 Application of chapter to prior deaths. This chapter shall not apply to the distribution of the property of a person who has died before it takes effect. [1965 c 145 § 11.05.900. Prior: 1943 c 113 § 5; Rem. Supp. 1943 § 1370-5.]

11.05.910 Construction of chapter. This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it. [1965 c 145 § 11.05.910. Prior: 1943 c 113 § 7; Rem. Supp. 1943 § 1370-7.]

Chapter 11.08
ESCHEATS

Sections

Action to recover property forfeited to state: RCW 7.56.120.

Banks, disposition of unclaimed personalty: RCW 30.44.150, 30.44.180 through 30.44.230.

Escheat of postal savings system accounts: Chapter 63.48 RCW.

Permanent common school fund, escheats as source of: RCW 28A.515.300.

Savings and loan associations, escheats: RCW 33.20.130, 33.40.110.

Social security benefits, payment to survivors or secretary of social and health services: RCW 11.66.010.

State land acquired by escheat, management: RCW 79.01.612.

Unclaimed estate, disposition: RCW 11.76.220.

Uniform unclaimed property act: Chapter 63.29 RCW.

11.08.101 Property of deceased inmates of state institutions—Disposition after two years. Where, upon the expiration of two years after the death of any inmate of any state institution, there remains in the custody of the superintendent of such institution, money or property belonging to said deceased inmate, the superintendent shall forward such money to the state treasurer for deposit in the general fund of the state, and shall report such transfer and any remaining property to the department of corrections, which department shall cause the sale of such property and proceeds thereof shall be forwarded to the state treasurer for deposit in the general fund. [1981 c 136 § 58; 1979 c 141 § 10; 1965 c 145 § 11.08.101. Prior: 1951 c 138 § 1; prior: 1923 c 113 § 1; RRS § 1363-1.]

Effective date—1981 c 136: See RCW 72.09.900.

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

State institutions: Title 72 RCW.

11.08.111 Property of deceased inmates of state institutions—Disposition within two years. Prior to the expiration of the two-year period provided for in RCW 11.08.101, the superintendent may transfer such money or property in his possession, upon request and satisfactory proof submitted to him, to the following designated persons:

(1) To the personal representative of the estate of such deceased inmate; or

(2) To the successor or successors defined in RCW 11.62.005, where such money and property does not exceed the amount specified in RCW 6.13.030, and the successor or successors shall have furnished proof of death and an affidavit made by said successor or successors meeting the requirements of RCW 11.62.010; or

(3) In the case of money, to the person who may have deposited such money with the superintendent for the use of the decedent, where the sum involved does not exceed one thousand dollars; or

(4) To the department of social and health services, when there are moneys due and owing from such deceased person's estate for the cost of his care and maintenance at a state institution: PROVIDED, That transfer of such money or property may be made to the person first qualifying under this section and such transfer shall exonerate the superintendent from further responsibility relative to such money or property: AND PROVIDED FURTHER, That upon satisfactory showing the funeral expenses of such decedent are unpaid, the superintendent may pay up to one thousand dollars from said deceased inmate's funds on said obligation. [1990 c 225 § 2; 1973 1st ex.s. c 76 § 1; 1965 c 145 § 11.08.111. Prior: 1959 c 240 § 1; 1951 c 138 § 2.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

11.08.120 Property of deceased inmates of state institutions—Sale—Disposition of proceeds. The property, other than money, of such deceased inmate remaining in the custody of a superintendent of a state institution after the expiration of the above two-year period may be forwarded to the department of corrections at its request and may be appraised and sold at public auction to the highest bidder in the manner and form as provided for public sales of personal property, and all moneys realized upon such sale, after deducting the expenses thereof, shall be paid into the general fund of the state treasury. [1981 c 136 § 59; 1979 c 141 § 11; 1965 c 145 § 11.08.120. Prior: 1951 c 138 § 3; prior: 1923 c 113 § 2; RRS § 1363-2.]

Effective date—1981 c 136: See RCW 72.09.900.

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

11.08.140 Escheat for want of heirs. Whenever any person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state and without being survived by any person entitled to the same under the laws of this state, such property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.280. [1965 c 145 § 11.08.140. Prior: 1955 c 254 § 2.]

11.08.150 Title to property vests in state at death of owner. Title to escheat property, which shall include any intangible personalty, shall vest in the state at the death of the owner thereof. [1965 c 145 § 11.08.150. Prior: 1955 c 254 § 3.]

11.08.160 Department of revenue—Jurisdiction—Duties. The department of revenue of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings, including any proceeding under chapter 11.62 RCW, deemed necessary or proper in the handling of such property, and it shall be the duty of the department of revenue to protect and conserve escheat property for the benefit of the permanent common school fund of the state until such property or the proceeds thereof have been forwarded to the state treasurer or the department of natural resources as hereinafter provided. [1988 c 128 § 1; 1988 c 64 § 23; 1975 1st ex.s. c 278 § 1; 1965 c 145 § 11.08.160. Prior: 1955 c 254 § 4.]

Reviser's note: This section was amended by 1988 c 64 § 23 and by 1988 c 128 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Severability—1975 1st ex.s. c 278: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 278 § 215.]

Construction—1975 1st ex.s. c 278: "The legislature hereby reaffirms its singular intent under this amendatory act to change the designation of the state tax commission to the department of revenue or the board of tax appeals, as the case may be, and to make explicit its intent that no rights, duties, obligations or benefits, of whatsoever kind, are to be construed as changed as a result of the enactment hereof." [1975 1st ex.s. c 278 § 217.]

11.08.170 Probate of escheat property—Notice to department of revenue. Escheat property may be probated under the provisions of the probate laws of this state. Whenever such probate proceedings are instituted, whether by special administration or otherwise, the petitioner shall promptly notify the department of revenue in writing thereof on forms furnished by the department of revenue to the county clerks. Thereafter, the department of revenue shall be served with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Like notice shall be given of the presentation of any claims to the court for allowance. Failure to furnish such notice shall be deemed jurisdictional and any order of the court entered without such notice shall be void. The department of revenue may waive the provisions of this section in its discretion. The department shall be deemed to have waived its right to administer in such probate proceedings under RCW 11.28.120(3) unless application for appointment of the director or the director's designee is made within forty days immediately following receipt of notice of institution of proceedings. [1990 c 225 § 1; 1975 1st ex.s. c 278 § 2; 1965 c 145 § 11.08.170. Prior: 1955 c 254 § 5.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.180 Department of revenue to be furnished copies of documents and pleadings. The department of revenue may demand copies of any papers, documents or pleadings involving the escheat property or the probate thereof deemed by it to be necessary for the enforcement of RCW 11.08.140 through 11.08.280 and it shall be the duty of the administrator or his attorney to furnish such copies to the department. [1975 1st ex.s. c 278 § 3; 1965 c 145 § 11.08.180. Prior: 1955 c 254 § 6.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.185 Escheat property—Records of department of revenue—Public record information. All records of the department of revenue relating to escheated property or property about to escheat shall be a public record and shall be made available by the department of revenue for public inspection. Without limitation, the records to be made public shall include all available information regarding possible heirs, descriptions and amounts of property escheated or about to escheat, and any information which might serve to identify the proper heirs. [1973 c 25 § 1.]

11.08.200 Liability for use of escheated property. If any person shall take possession of escheat property without proper authorization to do so, and shall have the use thereof for a period exceeding sixty days, he shall be liable to the state for the reasonable value of such use, payment of which may be enforced by the department of revenue or by the administrator of the estate. [1975 1st ex.s. c 278 § 4; 1965 c 145 § 11.08.200. Prior: 1955 c 254 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.205 Lease, sublease, or rental of escheated real property—Authorized—Expenses—Distribution of proceeds. (1) The department of natural resources shall have the authority to lease real property from the administrator of an estate being probated under the escheat provisions, RCW 11.08.140 to 11.08.280.

(2) The department of natural resources shall have the authority to sublease or rent the real property, it has leased under subsection (1) of this section, during the period that the real property is under the authority of the court appointed administrator.

(3) Any moneys gained by the department of natural resources from leases or rentals shall be credited to an escheat reserve account bearing the name of the estate.

(4) The department of natural resources shall have the authority to expend moneys to preserve and maintain the real property during the probate period.

(5) Any expenses by the department of natural resources in preserving or maintaining the real property may be paid as follows:

(a) First, the expenses shall be charged to the escheat reserve account bearing the name of the estate; and

(b) Second, if the expenses exceed the escheat reserve account, then the expenses shall be paid as follows:

(i) If the land is distributed to the state by the administrator, the expenses shall be paid out of the sale price of the land as later sold by the department of natural resources, or shall be paid out of the general fund if the land is held for use by the state; or

(ii) If the land is distributed to the heirs by the administrator, the expenses shall be borne by the estate.

(6) Upon the final distribution of the real property, the escheat reserve account shall be closed out as follows:

(a) If the real property is distributed to the state, the balance of the account shall be paid into the permanent common school fund of the state; or

(b) If the real property is distributed to the heirs, the balance of the account shall be paid to the estate. [1969 ex.s. c 249 § 1.]

11.08.210 Allowance of claims, expenses, partial fees—Sale of property—Decree of distribution. If at the expiration of four months from the date of the first publication of notice to creditors no heirs have appeared and established their claim to the estate, the court may enter an interim order allowing claims, expenses, and partial fees. If at the expiration of ten months from the date of issuance of letters testamentary or of administration no heirs have appeared and established their claim to the estate, all personal property not in the form of cash shall be sold under order of the court. Personal property found by the court to be worthless shall be ordered abandoned. Real property shall not be sold for the satisfaction of liens thereon, or for the payment of the debts of decedent or expenses of administration until the proceeds of the personal property are first exhausted. The court shall then enter a decree allowing any additional fees and charges deemed proper and distributing the balance of the cash on hand, together with any real property, to the state. Remittance of cash on hand shall be made to the department of revenue which shall make proper records thereof and forthwith forward such funds to the state treasurer for deposit in the permanent common school fund of the state. [1979 ex.s. c 209 § 19; 1975 1st ex.s. c 278 § 5; 1965 c 145 § 11.08.210. Prior: 1955 c 254 § 9.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.220 Certified copies of decree—Department of natural resources duties. The department of revenue shall be furnished two certified copies of the decree of the court distributing any real property to the state, one of which shall be forwarded to the department of natural resources which shall thereupon assume supervision of and jurisdiction over such real property and thereafter handle it the same as state common school lands. The administrator shall also file a certified copy of the decree with the auditor of any county in which the escheated real property is situated. [1988 c 128 § 2; 1975 1st ex.s. c 278 § 6; 1965 c 145 § 11.08.220. Prior: 1957 c 125 § 1; 1955 c 254 § 10.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Management of acquired lands by department of natural resources: RCW 79.01.612.

11.08.230 Appearance and claim of heirs—Notices to department of revenue. Upon the appearance of heirs and the establishment of their claim to the satisfaction of the court prior to entry of the decree of distribution to the estate, the provisions of RCW 11.08.140 through 11.08.280 shall not further apply, except for purposes of appeal: PROVIDED, That the department of revenue shall be promptly given written notice of such appearance by the claimants and furnished copies of all papers or documents on which such claim of heirship is based. Any documents in a foreign language shall be accompanied by translations made by a properly qualified translator, certified by him to be true and correct translations of the original documents. The administrator or his attorney shall also furnish the department of revenue with any other available information bearing on the validity of the claim. [1975 1st ex.s. c 278 § 7; 1965 c 145 § 11.08.230. Prior: 1955 c 254 § 11.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.240 Limitation on filing claim. Any claimant to escheated funds or real property shall have seven years from the date of issuance of letters testamentary or of administration within which to file his claim. Such claim shall be filed with the court having original jurisdiction of the estate, and a copy thereof served upon the department of revenue, together with twenty days notice of the hearing thereon. [1975 1st ex.s. c 278 § 8; 1965 c 145 § 11.08.240. Prior: 1955 c 254 § 12.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.250 Order of court on establishment of claim. Upon establishment of the claim to the satisfaction of the court, it shall order payment to the claimant of any escheated funds and delivery of any escheated land, or the proceeds

thereof, if sold. [1965 c 145 § 11.08.250. Prior: 1955 c 254 § 13.]

11.08.260 Payment of escheated funds to claimant. In the event the order of the court requires the payment of escheated funds or the proceeds of the sale of escheated real property, a certified copy of such order shall be served upon the department of revenue which shall thereupon take any steps necessary to effect payment to the claimant out of the general fund of the state. [1975 1st ex.s. c 278 § 9; 1965 c 145 § 11.08.260. Prior: 1955 c 254 § 14.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.270 Conveyance of escheated property to claimant. In the event the order of the court requires the delivery of real property to the claimant, a certified copy of such order shall be served upon the department of natural resources which shall thereupon make proper certification to the office of the governor for issuance of a quitclaim deed for the property to the claimant. [1988 c 128 § 3; 1965 c 145 § 11.08.270. Prior: 1955 c 254 § 15.]

11.08.280 Limitation when claimant is minor or incompetent not under guardianship. The claims of any persons to escheated funds or real property which are not filed within seven years as specified above are forever barred, excepting as to those persons who are minors or who are legally incompetent and not under guardianship, in which event the claim may be filed within seven years after their disability is removed. [1965 c 145 § 11.08.280. Prior: 1955 c 254 § 16.]

11.08.290 Deposit of cash received by personal representative of escheat estate. All cash received by the personal representative of an escheat estate shall be immediately deposited at interest for the benefit of the estate in a federally insured time or savings deposit or share account, except that the personal representative may maintain an amount not to exceed two hundred fifty dollars in a checking account. This arrangement may be changed by appropriate court order. [1979 ex.s. c 209 § 18.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.08.300 Transfer of property to department of revenue. Escheat property may be transferred to the department of revenue under the provisions of RCW 11.62.005 through 11.62.020. The department of revenue shall furnish proof of death and an affidavit made by the department which meets the requirements of RCW 11.62.010 to any person who is indebted to or has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community, which debt or personal property is an asset which is subject to probate. Upon receipt of such proof of death and affidavit, the person shall pay the indebtedness or deliver the personal property, or as much of either as is claimed, to the department of revenue pursuant to RCW 11.62.010.

The department of revenue shall file a copy of its affidavit made pursuant to chapter 11.62 RCW with the clerk of the court where any probate administration of the decedent has been commenced, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as a place for probate administration of the estate of such person. The affidavit shall be indexed under the name of the decedent in the probate index upon payment of a fee of two dollars. Any claimant to escheated funds shall have seven years from the filing of the affidavit by the department of revenue within which to file the claim. The claim shall be filed with the clerk of the court where the affidavit of the department of revenue was filed, and a copy served upon the department of revenue, together with twenty days notice of a hearing to be held thereon, and the provisions of RCW 11.08.250 through 11.08.280 shall apply. [1990 c 225 § 3.]

Chapter 11.12
WILLS

Sections

Inheritance rights of slayers: Chapter 11.84 RCW.

Probate records, replacement when lost or destroyed: RCW 5.48.060.

Trust company advertising will preparation, penalty: RCW 30.04.260.

11.12.010 Who may make a will. Any person of sound mind who has attained the age of eighteen years may, by last will, devise all his or her estate, both real and personal.

All wills executed subsequent to September 16, 1940, and which meet the requirements of this section are hereby validated and shall have all the force and effect of wills executed subsequent to the taking effect of this section. [1970 ex.s. c 17 § 3; 1965 c 145 § 11.12.010. Prior: 1943 c 193 § 1; 1917 c 156 § 24; Rem. Supp. 1943 § 1394; prior: Code 1881 § 1318; 1863 p 207 § 51; 1860 p 169 § 18.]

11.12.020 Requisites of wills—Foreign wills. (1) Every will shall be in writing signed by the testator or by

some other person under the testator's direction in the testator's presence, and shall be attested by two or more competent witnesses, by subscribing their names to the will, or by signing an affidavit that complies with RCW 11.20.020(2), while in the presence of the testator and at the testator's direction or request: PROVIDED, That a last will and testament, executed in the mode prescribed by the law of the place where executed or of the testator's domicile, either at the time of the will's execution or at the time of the testator's death, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state.

(2) This section shall be applied to all wills, whenever executed, including those subject to pending probate proceedings. [1990 c 79 § 1; 1965 c 145 § 11.12.020. Prior: 1929 c 21 § 1; 1917 c 156 § 25; RRS § 1395; prior: Code 1881 § 1319; 1863 p 207 §§ 53, 54; 1860 p 170 §§ 20, 21. FORMER PART OF SECTION; re nuncupative wills, now codified as RCW 11.12.025.]

11.12.025 Nuncupative wills. Nothing contained in this chapter shall prevent any member of the armed forces of the United States or person employed on a vessel of the United States merchant marine from disposing of his wages or personal property, or prevent any person competent to make a will from disposing of his or her personal property of the value of not to exceed one thousand dollars, by nuncupative will if the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and that such nuncupative will was made at the time of the last sickness of the testator, but no proof of any nuncupative will shall be received unless it be offered within six months after the speaking of the testamentary words, nor unless the words or the substance thereof be first committed to writing, and in all cases a citation be issued to the widow and/or heirs at law of the deceased that they may contest the will, and no real estate shall be devised by a nuncupative will. [1965 c 145 § 11.12.025. Formerly RCW 11.12.020, part.]

11.12.030 Signature of testator at his direction—Signature by mark. Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name to such will and state that he subscribed the testator's name at his request: PROVIDED, That such signing and statement shall not be required if the testator shall evidence the approval of the signature so made at his request by making his mark on the will. [1965 c 145 § 11.12.030. Prior: 1927 c 91 § 1; 1917 c 156 § 27; RRS § 1397; prior: Code 1881 § 1320; 1863 p 207 § 54; 1860 p 170 § 21.]

11.12.040 Revocation of will, how effected. A will, or any part thereof, can be revoked

(1) By a written will; or

(2) By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or by another person in his presence and by his direction. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses. [1965 c 145 § 11.12.040. Prior: 1917 c 156 § 28; RRS § 1398; prior: Code 1881 § 1321; 1863 p 207 § 55; 1860 p 170 § 22.]

11.12.050 Subsequent marriage of testator—Divorce. If, after making any will, the testator shall marry and the spouse shall be living at the time of the death of the testator, such will shall be deemed revoked as to such spouse, unless provision shall have been made for such survivor by marriage settlement, or unless such survivor be provided for in the will or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received. A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse. [1965 c 145 § 11.12.050. Prior: 1917 c 156 § 29; RRS § 1399; prior: Code 1881 § 1322; 1863 p 207 § 56; 1860 p 170 § 23.]

11.12.060 Agreement to convey does not revoke. A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to him. [1965 c 145 § 11.12.060. Prior: 1917 c 156 § 30; RRS § 1400; prior: Code 1881 § 1323; 1863 p 208 § 58; 1860 p 170 § 25.]

11.12.070 Devise or bequeathal of property subject to encumbrance. When any real or personal property subject to a mortgage is specifically devised, the devisee shall take such property so devised subject to such mortgage unless the will provides that such mortgage be otherwise paid. The term "mortgage" as used in this section shall not include a pledge of personal property.

A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance. [1965 c 145 § 11.12.070. Prior: 1955 c 205 § 2; 1917 c 156 § 31; RRS § 1401; prior: Code 1881 § 1324; 1860 p 170 § 26.]

11.12.080 No revival of will by revocation of later one. If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation, or revocation of such second will shall not revive the first will. [1965 c 145 § 11.12.080. Prior: 1917 c 156 § 35; RRS § 1405; prior: Code 1881 § 1328; 1863 p 208 § 63; 1860 p 171 § 30.]

11.12.090 Intestacy as to pretermitted children. If any person make his last will and die leaving a child or

children or descendants of such child or children not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, as to such child or children not named or provided for, shall be deemed to die intestate, and such child or children or their descendants shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part. [1965 c 145 § 11.12.090. Prior: 1917 c 156 § 32; RRS § 1402; prior: Code 1881 § 1325; 1863 p 208 § 60; 1860 p 170 § 27.]

11.12.110 Death of devisee or legatee before testator. When any estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done in the case he had survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such predeceased devisee or legatee. A spouse is not a relative under the provisions of this section. [1965 c 145 § 11.12.110. Prior: 1947 c 44 § 1; 1917 c 156 § 34; Rem. Supp. 1947 § 1404; prior: Code 1881 § 1327; 1863 p 208 § 62; 1860 p 171 § 29.]

When beneficiary with disclaimed interest deemed to have died: RCW 11.86.041.

11.12.120 Lapsed legacy or devise—Procedure and proof. Whenever any person having died leaving a will which has been admitted to probate or established by an adjudication of testacy, shall by said will have given, devised or bequeathed unto any person, a legacy or a devise upon the condition that said person survive him, and not otherwise, such legacy or devise shall lapse and fall into the residue of said estate to be distributed according to the residuary clause, if there be one, of said will, and if there be none then according to the laws of descent, unless said legatee or devisee, as the case may be, or his heirs, personal representative, or someone in behalf of such legatee or devisee, shall appear before the court which is administering said estate within three years from and after the date the said will was admitted to probate or established by an adjudication of testacy, and prove to the satisfaction of the court that the said legatee or devisee, as the case may be, did in fact survive the testator. [1974 ex.s. c 117 § 51; 1965 c 145 § 11.12.120. Prior: 1937 c 151 § 1; RRS § 1404-1.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.12.130 Procedure where legatee or devisee is an absentee. If it shall be made to appear to the satisfaction of said court within the time fixed by RCW 11.12.120 that such legatee or devisee, as the case may be, did in fact survive the testator, but that such legatee, or devisee, is an absentee within the meaning of chapter 11.80 RCW, then and in that event the court shall by appropriate order direct the said legacy or devise to be distributed to a trustee appointed and qualified as provided for in said chapter 11.80 RCW. [1965 c 145 § 11.12.130. Prior: 1937 c 151 § 2; RRS § 1404-2.]

11.12.140 Order of court declaring lapse. The personal representative, residuary legatee, or any heir at law of any such estate, may by sworn petition call the attention of the court to the fact that the periods of time set forth in RCW 11.12.120 have elapsed, and that such legatee or devisee, his heirs, personal representative, or anyone in his behalf, has not appeared and proved to the satisfaction of the court that such legatee or devisee survived the testator, and if it appear from the records of the proceedings in said estate that the allegations of the petition are true, it shall be the duty of the court to enter an appropriate order declaring such legacy or devise to have lapsed, and directing its disposition as provided for in RCW 11.12.120. [1965 c 145 § 11.12.140. Prior: 1937 c 151 § 3; RRS § 1404-3.]

11.12.150 Petition and notice where legatee or devisee unknown. Every personal representative of such an estate shall, within two years after the said will has been admitted to probate, file in said probate proceedings a sworn petition which shall set out in detail the name and last known address of any such legatee or devisee, the circumstances of his departure from that address, if known; his occupation or business, if known; the fact that the personal representative has been unable to locate him or to ascertain whether or not he survived the testator; and all other facts within the knowledge of the personal representative, which may aid the court in determining the best and most advantageous method to employ in attempting to locate said legatee or devisee. Upon such a petition being filed it shall be the duty of the court, and the court shall have the power, to call before it the personal representative and such witnesses as may be necessary, and examine them under oath as to the truth of the allegations in said petition. After the hearing the court may direct such notice to be given as it shall think will most likely come to the attention of said legatee or devisee, or persons who might know him. Such notice shall be given for such a length of time and in such places as the court may order, and shall set forth the fact that a legacy or devise, as the case may be, awaits the person therein named, and shall call upon all persons having any knowledge concerning the said person or his whereabouts to notify the court of all the facts within their knowledge concerning said person, within a time therein stated. [1965 c 145 § 11.12.150. Prior: 1937 c 151 § 4; RRS § 1404-4.]

11.12.160 Witness as devisee or legatee—Effect on will. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will

not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him. [1965 c 145 § 11.12.160. Prior: 1917 c 156 § 38; RRS § 1408; prior: Code 1881 § 1331; 1863 p 209 § 67; 1860 p 171 § 34.]

11.12.170 Devise of land, what passes. Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate. [1965 c 145 § 11.12.170. Prior: 1917 c 156 § 39; RRS § 1409; prior: Code 1881 § 1332; 1863 p 209 § 69; 1860 p 172 § 36.]

11.12.180 Estate for life—Remainder. If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator. [1965 c 145 § 11.12.180. Prior: 1917 c 156 § 40; RRS § 1410; prior: Code 1881 § 1333; 1863 p 210 § 70; 1860 p 172 § 37.]

11.12.190 Will to operate on after-acquired property. Any estate, right or interest in property acquired by the testator after the making of his will may pass thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. [1965 c 145 § 11.12.190. Prior: 1917 c 156 § 41; RRS § 1411; prior: Code 1881 § 1334; 1863 p 210 § 71; 1860 p 172 § 38.]

11.12.200 Contribution among devisees and legatees. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken. [1965 c 145 § 11.12.200. Prior: 1917 c 156 § 42; RRS § 1412; prior: Code 1881 § 1335; 1863 p 210 § 72; 1860 p 172 § 39.]

11.12.210 Enforcement of contribution. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made and enforce such order. [1965 c 145 § 11.12.210. Prior: 1917 c 156 § 43; RRS § 1413; prior: Code 1881 § 1336; 1863 p 210 § 73; 1860 p 172 § 40.]

11.12.220 No interest on devise unless will so provides. No interest shall be allowed or calculated on any devise contained in any will unless such will expressly provides for such interest. [1965 c 145 § 11.12.220. Prior: 1917 c 156 § 26; RRS § 1396.]

11.12.230 Intent of testator controlling. All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them. [1965 c 145 § 11.12.230. Prior: 1917 c 156 § 45; RRS § 1415; prior: Code 1881 § 1338; 1863 p 210 § 75; 1860 p 172 § 42.]

11.12.250 Gift to trust. A gift may be made by a will to a trustee of a trust executed by any trustor or testator (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if (1) the trust is identified in the testator's will and (2) its terms are evidenced either (a) in a written instrument other than a will, executed by the trustor prior to or concurrently with the execution of the testator's will or (b) in the will of a person who has predeceased the testator, regardless of when executed. The existence, size, or character of the corpus of the trust is immaterial to the validity of the gift. Such gift shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the testator's will or after the testator's death. Unless the will provides otherwise, the property so given shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given to be administered and disposed of in accordance with the terms of the instrument establishing the trust, including any amendments, made prior to the death of the testator, and regardless of whether made before or after the execution of the will. Unless the will provides otherwise, an express revocation of the trust prior to the testator's death invalidates the gift. Any termination of the trust other than by express revocation does not invalidate the gift. For purposes of this section, the term "gift" includes the exercise of any testamentary power of appointment. [1985 c 23 § 2. Prior: 1984 c 149 § 5; 1965 c 145 § 11.12.250; prior: 1959 c 116 § 1.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—1985 c 23: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 23 § 1.]

Application—1985 c 23: "This act shall apply to wills of decedents dying after December 31, 1984." [1985 c 23 § 5.]

Severability—1985 c 23: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 23 § 6.]

Reviser's note: 1985 c 23 reenacted RCW 11.12.250 through 11.12.260 without amendment.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Trusts—Rule against perpetuities: Chapter 11.98 RCW.

11.12.255 Incorporation by reference. A will may incorporate by reference any writing in existence when the will is executed if the will itself manifests the testator's intent to incorporate the writing and describes the writing sufficiently to permit its identification. In the case of any inconsistency between the writing and the will, the will controls. [1985 c 23 § 3. Prior: 1984 c 149 § 6.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.12.260 Separate writing may direct disposition of tangible personal property—Requirements. (1) A will may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will and need not have significance apart from its effect upon the dispositions of property made by the will. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will itself, except that if any person designated to receive property in the writing dies before the testator, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and RCW 11.12.110 shall not apply to such lapse.

(3) The testator may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities. [1985 c 23 § 4. Prior: 1984 c 149 § 7.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.16
JURISDICTION—VENUE—NOTICES

Sections

Superior court clerk, fees: RCW 36.18.020.

Unknown heirs, pleading, service, etc.: RCW 4.28.140 through 4.28.160: Rules of court: CR 10(a).

Venue in probate and trust proceedings: RCW 11.96.050.

11.16.060 Property of nonresident in more than one county—Jurisdiction. When the estate of the deceased is in more than one county, he not having been a resident of the state at the time of his death, the superior court of that county in which the application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate. [1965 c 145 § 11.16.060. Prior: 1917 c 156 § 7; RRS § 1377; prior: Code 1881 § 1341; 1863 p 211 § 77; 1860 p 173 § 44.]

11.16.070 Proceedings had in county where letters granted. All orders, settlements, trials and other proceedings, under this title shall be had or made in the county in which letters testamentary or of administration were granted. [1965 c 145 § 11.16.070. Prior: 1917 c 156 § 8; RRS § 1378; prior: 1891 p 381 § 5; Code 1881 § 1314; 1863 p 206 § 47.]

11.16.082 Proof of service. Proof of service in all cases requiring notice, whether by publication, mailing or otherwise, shall be filed in the cause. [1965 c 145 § 11.16.082.]

11.16.083 Waiver of notice. Notwithstanding any other provision of this title, no notice of any hearing in probate or probate proceeding need be given to any legally competent person who is interested in any hearing in any probate as an heir, legatee, or devisee of the decedent who has in person or by attorney waived in writing notice of such hearing or proceeding. Such waiver of notice may apply to either a specific hearing or proceeding, or to any and all hearings and proceedings to be held during the administration of the estate in which event such waiver of notice shall be of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy thereof to the personal representative and his attorney. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice thereof shall have waived such notice, the court may hear the matter forthwith. A guardian of the estate or a guardian ad litem may make such waivers on behalf of his incompetent, and a trustee may make such waivers on behalf of any competent or incompetent beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof. [1977 ex.s. c 234 § 1; 1965 c 145 § 11.16.083.]

Severability—1977 ex.s. c 234: "If any provisions of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 234 § 30.]

Effective date—Application—1977 ex.s. c 234: "This 1977 amendatory act shall take effect on October 1, 1977 and shall apply to all proceedings in probate with respect to decedents whose deaths occurred after the effective date." [1977 ex.s. c 234 § 31.]

Appointment of guardian, waiver of notice of hearing: RCW 11.88.040.

Award in lieu of homestead—Notice of hearing: RCW 11.52.014.

Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.

Citations in contest of will: RCW 11.24.020.

Notice
of appointment as special representative: RCW 11.28.237.
to creditors when personal representative resigns, dies, or is removed: RCW 11.40.150.
to department of revenue of appointment as personal representative: RCW 82.32.240.

Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.

Request for special notice of proceedings in probate: RCW 11.28.240.

Surviving spouse, waiver of notice of hearing on petition for letters: RCW 11.28.131.

11.16.120 Books of record to be kept by county clerk. See RCW 36.23.030.

Chapter 11.20
CUSTODY, PROOF, AND PROBATE OF WILLS

Sections

11.20.010 Duty of custodian of will—Liability. Any person having the custody or control of any will shall, within thirty days after he shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his custody or control any will shall within forty days after he received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the damages which may be sustained by such violation. [1965 c 145 § 11.20.010. Prior: 1917 c 156 § 9; RRS § 1379; prior: Code 1881 §§ 1342, 1343; 1863 p 212 § 78; 1860 p 174 § 45.]

Refusal to serve as executor: RCW 11.28.010.

11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses. (1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.330 or 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at the request of the testator or, after his decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be attached to the will or to a photographic copy of the will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court. [1977 ex.s. c 234 § 2; 1974 ex.s. c 117 § 27; 1969 ex.s. c 126 § 1; 1965 c 145 § 11.20.020. Prior: 1917 c 156 § 10; RRS § 1380; prior: 1863 p 212 §§ 85, 86; 1860 p 175 §§ 52, 53.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Will contests: Chapter 11.24 RCW.

11.20.030 Commission to take testimony of witness. If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, notary public, or other person authorized to administer an oath, empowering him or her to take and certify the attestation of such witness. [1987 c 202 § 171; 1965 c 145 § 11.20.030. Prior: 1923 c 142 § 1; 1917 c 156 § 11; RRS § 1381; prior: Code 1881 § 1351; 1863 p 212 § 87; 1860 p 175 § 54.]

Intent—1987 c 202: See note following RCW 2.04.190.

11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state. The subsequent incompetency from whatever cause of one or more of the subscribing witnesses, or their inability to testify in open court or pursuant to commission, or their absence from the state, shall not prevent the probate of the will. In such cases the court shall admit the will to probate upon satisfactory testimony that the handwriting of the testator and of an incompetent or absent subscribing witness is genuine or the court may consider such other facts and circumstances, if any, as would tend to prove such will. [1967 c 168 § 5; 1965 c 145 § 11.20.040. Prior: 1945 c 39 § 1; 1943 c 219 § 1; 1917 c 156 § 12; Rem. Supp. 1945 § 1382; prior: Code 1881 § 1353; 1863 p 213 §§ 89, 90; 1860 p 175 §§ 56, 57.]

11.20.050 Recording of wills. All wills shall be recorded by the clerk after filing, but may be withdrawn on the order of the court. [1967 c 168 § 17; 1965 c 145 § 11.20.050. Prior: 1915 c 156 § 13; RRS § 1383; prior: Code 1881 § 1356; 1863 p 213 § 92; 1860 p 175 § 59.]

Clerk to keep record of wills: RCW 36.23.030(7).

11.20.060 Record of will as evidence. The record of any will made, probated and recorded as herein provided, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven. [1965 c 145 § 11.20.060. Prior: 1917 c 156 § 14; RRS § 1384; prior: 1891 p 382 § 7; Code 1881 § 1358; 1863 p 213 § 94; 1860 p 175 § 61.]

Certified copies of recorded instruments as evidence: RCW 5.44.060.

11.20.070 Proof of lost or destroyed will. Whenever any will is lost or destroyed, the court may take proof of the execution and validity of such will and establish it, notice to all persons interested having been first given. Such proof shall be reduced to writing and signed by the witnesses and filed with the clerk of the court.

No will shall be allowed to be proved as a lost or destroyed will unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been destroyed, canceled or mutilated in whole or in part as a result of actual or constructive fraud or in the course of an attempt to change the will in whole or in part, which attempt has failed, or as the result of a mistake of fact, nor unless its provisions are clearly and distinctly proved by at least two witnesses, and when any such will is so established, the provisions thereof shall be distinctly stated in the judgment establishing it, and such judgment shall be recorded as wills are required to be recorded. Executors of such will or administrators with the will annexed may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate. [1965 c 145 § 11.20.070. Prior: 1955 c 205 § 1; 1917 c 156 § 20; RRS § 1390; prior: Code 1881 § 1367; 1860 p 177 § 70.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have authority to restrain the personal representatives so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. [1965 c 145 § 11.20.080. Prior: 1917 c 156 § 21; RRS § 1391; prior: Code 1881 § 1369; 1863 p 215 § 105; 1860 p 177 § 72.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

11.20.090 Admission to probate of foreign will. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, certified by the attestation of the clerk of the court in which such probation was made; or if there be no clerk, certification by the attestation of the judge thereof, and by the seal of such officers, if they have a seal. [1977 ex.s. c 234 § 3; 1965 c 145 § 11.20.090. Prior: 1917 c 156 § 22; RRS § 1392; prior: Code 1881 § 1370; 1877 p 284 § 1.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.20.100 Laws applicable to foreign wills. All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state. [1965 c 145 § 11.20.100. Prior: 1917 c 156 § 23; RRS § 1393; prior: Code 1881 § 1371; 1877 p 284 § 2.]

Chapter 11.24
WILL CONTESTS

Sections

11.24.010 Contest of admission or rejection—Limitation of action—Issues. If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will.

If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding and final. [1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

11.24.020 Citation on contest. Upon the filing of the petition referred to in RCW 11.24.010, a citation shall be issued to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted. [1965 c 145 § 11.24.020. Prior: 1917 c 156 § 16; RRS § 1386; prior: 1891 p 382 § 9; Code 1881 § 1361; 1863 p 214 § 97; 1860 p 176 § 64.]

11.24.030 Burden of proof. In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if

rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probation or rejection of the will. [1965 c 145 § 11.24.030. Prior: 1917 c 156 § 17; RRS § 1387.]

11.24.040 Revocation of probate. If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked, and thereupon and thereafter the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to such annulling or revoking. [1965 c 145 § 11.24.040. Prior: 1917 c 156 § 18; RRS § 1388; prior: Code 1881 § 1364; 1863 p 214 § 100; 1860 p 177 § 67.]

11.24.050 Costs. If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper. [1965 c 145 § 11.24.050. Prior: 1917 c 156 § 19; RRS § 1389; prior: Code 1881 § 1366; 1860 p 177 § 69.]

Rules of court: SPR 98.12W.

Personal representative
allowance of necessary expenses: RCW 11.48.050.
compensation—Attorney's fee: RCW 11.48.210.

Chapter 11.28
LETTERS TESTAMENTARY AND OF ADMINISTRATION

Sections

Administration of deceased incompetent's estate: RCW 11.88.150.

Letters after final settlement: RCW 11.76.250.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Trust company may not solicit appointment as personal representative: RCW 30.04.260.

11.28.010 Letters to executors—Refusal to serve—Disqualification. After the entry of an order admitting a will to probate and appointing a personal representative, or personal representatives, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will. [1974 ex.s. c 117 § 28; 1965 c 145 § 11.28.010. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.020 Objections to appointment. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court. [1965 c 145 § 11.28.020. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

11.28.030 Community property—Who entitled to letters—Waiver. A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse to be otherwise qualified; but if such surviving spouse do not make application for such appointment within forty days immediately following the death of the deceased spouse, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse, for such time and in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or that he or she has in writing waived the right to administer upon such community property. [1965 c 145 § 11.28.030. Prior: 1917 c 156 § 49; RRS § 1419.]

11.28.040 Procedure during minority or absence of executor. If the executor be a minor or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former, provided a nonresident of this state may qualify as provided in RCW 11.36.010. [1965 c 145 § 11.28.040. Prior: 1917 c 156 § 50; RRS § 1420; prior: Code 1881 § 1374; 1863 p 217 § 108; 1860 p 180 § 75.]

11.28.050 Powers of remaining executors on removal of associate. When any of the executors named shall not qualify or having qualified shall become disqualified or be removed, the remaining executor or executors shall have the authority to perform every act and discharge every trust required by the will, and their acts shall be effectual for every purpose. [1965 c 145 § 11.28.050. Prior: 1917 c 156 § 54; RRS § 1424; prior: Code 1881 § 1372; 1854 p 268 § 5.]

11.28.060 Administration with will annexed on death of executor. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, on the estate of the first testator left unadministered, shall be issued. [1965 c 145 § 11.28.060. Prior: 1917 c 156 § 53; RRS § 1423; prior: Code 1881 § 1379; 1863 p 218 § 113; 1860 p 180 § 80.]

Executor of executor may not sue for estate of first testator: RCW 11.48.190.

11.28.070 Authority of administrator with will annexed. Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose: PROVIDED, That they shall not lease, mortgage, pledge, exchange, sell, or convey any real or personal property of the estate except under order of the court and pursuant to procedure under existing laws pertaining to the administration of estates in cases of intestacy, unless the powers expressed in the will are directory and not discretionary, or said administrator with will annexed shall have obtained nonintervention powers as provided in chapter 11.68 RCW. [1974 ex.s. c 117 § 25; 1965 c 145 § 11.28.070. Prior: 1955 c 205 § 3; 1917 c 156 § 55; RRS § 1425; prior: Code 1881 § 1381; 1860 p 180 § 82.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.085 Records and certification of letters—Record of bonds. See RCW 36.23.030.

11.28.090 Execution and form of letters testamentary. Letters testamentary to be issued to executors under the provisions of this chapter shall be signed by the clerk, and issued under the seal of the court, and may be in the following form:

State of Washington, county of . . . . . .

In the superior court of the county of . . . . . .

Whereas, the last will of A B, deceased, was, on the . . . . day of . . . . . , A.D., ..., duly exhibited, proven, and recorded in our said superior court; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all men by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this . . . . day of . . . . . ., A.D., 19. . .

[1965 c 145 § 11.28.090. Prior: (i) 1917 c 156 § 56; RCW 11.28.080; RRS § 1426; prior: Code 1881 § 1382; 1863 p 218 § 116; 1860 p 181 § 83. (ii) 1917 c 156 § 59; RRS § 1429; prior: Code 1881 § 1386; 1863 p 219 § 120; 1860 p 181 § 87.]

11.28.100 Form of letters with will annexed. Letters of administration with the will annexed shall be in substantially the same form as provided for letters testamentary. [1965 c 145 § 11.28.100. Prior: 1917 c 156 § 60; RRS § 1430; prior: Code 1881 § 1387; 1863 p 219 § 121.]

11.28.110 Application for letters of administration or adjudication of intestacy and heirship. Application for letters of administration, or, application for an adjudication of intestacy and heirship without the issuance of letters of administration shall be made by petition in writing, signed and verified by the applicant or his attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and addresses of the heirs of the deceased and that the deceased died without a will. If the application for an adjudication of intestacy and heirship does not request the appointment of a personal representative and the court enters an adjudication of intestacy no further administration shall be required except as set forth in RCW 11.28.330 or 11.28.340. [1977 ex.s. c 234 § 4; 1974 ex.s. c 117 § 29; 1965 c 145 § 11.28.110. Prior: 1917 c 156 § 62; RRS § 1432; prior: Code 1881 § 1389; 1863 p 220 § 123; 1860 p 182 § 90.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.120 Persons entitled to letters. Administration of the estate of the person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving husband or wife, or such person as he or she may request to have appointed.

(2) The next of kin in the following order: (a) Child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.

(3) The director of revenue, or the director's designee, for those estates having property subject to the provisions of

chapter 11.08 RCW; however, the director may waive this right.

(4) One or more of the principal creditors.

(5) If the persons so entitled shall fail for more than forty days after the death of the intestate to present a petition for letters of administration, or if it appear to the satisfaction of the court that there are no relatives or next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate. [1985 c 133 § 1; 1965 c 145 § 11.28.120. Prior: 1927 c 76 § 1; 1917 c 156 § 61; RRS § 1431; prior: Code 1881 § 1388; 1863 p 219 § 122; 1860 p 181 § 89.]

11.28.131 Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse. When a petition for general letters of administration or for letters of administration with the will annexed shall be filed, the matter may [be] heard forthwith, appointment made and letters of administration issued: PROVIDED, That if there be a surviving spouse and a petition is presented by anyone other than the surviving spouse, or any person designated by the surviving spouse to serve as personal representative on his or her behalf, notice to the surviving spouse shall be given of the time and place of such hearing at least ten days before the hearing, unless the surviving spouse shall waive notice of the hearing in writing filed in the cause. [1974 ex.s. c 117 § 44.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.140 Form of letters of administration. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

State of Washington, County of . . . . . .

Whereas, A.B., late of . . . . . on or about the . . . . day of . . . . . A.D., ... died intestate, leaving at the time of his death, property in this state subject to administration: Now, therefore, know all men by these presents, that we do hereby appoint . . . . . administrator upon said estate, and whereas said administrator has duly qualified, hereby authorize him to administer the same according to law.

Witness my hand and the seal of said court this . . . . day of . . . . . A.D., 19. . .

[1965 c 145 § 11.28.140. Prior: 1917 c 156 § 65; RRS § 1435; prior: Code 1881 § 1392; 1863 p 220 § 125; 1860 p 182 § 92.]

11.28.150 Revocation of letters by discovery of will. If after letters of administration are granted a will of the deceased be found and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with the will annexed, shall be granted. [1965 c 145 § 11.28.150. Prior: 1917 c 156 § 51; RRS § 1421; prior: Code 1881 § 1375; 1863 p 218 § 109; 1860 p 180 § 76.]

11.28.160 Cancellation of letters of administration. The court appointing any personal representative shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other personal representatives in the place of those removed. [1965 c 145 § 11.28.160. Prior: 1917 c 156 § 52; RRS § 1422.]

Revocation of letters—Causes: RCW 11.28.250.

11.28.170 Oath of personal representative. Before letters testamentary or of administration are issued, each personal representative or an officer of a bank or trust company qualified to act as a personal representative, must take and subscribe an oath, before some person authorized to administer oaths, that the duties of the trust as personal representative will be performed according to law, which oath must be filed in the cause and recorded. [1965 c 145 § 11.28.170. Prior: 1917 c 156 § 66; RRS § 1436; prior: Code 1881 § 1393; 1877 p 211 § 4; 1873 p 329 § 366.]

11.28.185 Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security. When the terms of the decedent's will manifest an intent that the personal representative appointed to administer the estate shall not be required to furnish bond or other security, or when the personal representative is the surviving spouse of the decedent and it appears to the court that the entire estate, after provision for expenses and claims of creditors, will be distributable to such spouse, then such personal representative shall not be required to give bond or other security as a condition of appointment. In all cases where a bank or trust company authorized to act as personal representative is appointed as personal representative, no bond shall be required. In all other cases, unless waived by the court, the personal representative shall give such bond or other security, in such amount and with such surety or sureties, as the court may direct.

Every person required to furnish bond must, before receiving letters testamentary or of administration, execute a bond to the state of Washington conditioned that the personal representative shall faithfully execute the duty of the trust according to law.

The court may at any time after appointment of the personal representative require said personal representative to give a bond or additional bond, the same to be conditioned and to be approved as provided in this section; or the court may allow a reduction of the bond upon a proper showing.

In lieu of bond, the court may in its discretion, substitute other security or financial arrangements, such as provided under RCW 11.88.105, or as the court may deem adequate to protect the assets of the estate. [1977 ex.s. c 234 § 5; 1974 ex.s. c 117 § 46.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.190 Examination of sureties—Additional security—Costs. Before the judge approves any bond required under this chapter, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the

sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the personal representative, requiring his appearance on the return of the citation, and on its return he may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he is satisfied that the bond is insufficient he must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: PROVIDED, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed. [1965 c 145 § 11.28.190. Prior: 1917 c 156 § 68; RRS § 1438; prior: Code 1881 § 1400; 1877 p 212 § 4; 1863 p 221 § 129; 1860 p 183 § 96.]

Fees and allowances of witnesses: Chapter 2.40 RCW, RCW 5.56.010.

11.28.210 New or additional bond. Any person interested may at any time by verified petition to the court, or otherwise, complain of the sufficiency of any bond or sureties thereon, and the court may upon such petition, or upon its own motion, and with or without hearing upon the matter, require the personal representative to give a new, or additional bond, or bonds, and in all such matters the court may act in its discretion and make such orders and citations as to it may seem right and proper in the premises. [1965 c 145 § 11.28.210. Prior: 1917 c 156 § 70; RRS § 1440; prior: 1891 p 383 § 13 1/2; Code 1881 § 1404; 1877 p 212 § 4; 1863 p 221 § 131; 1860 p 183 § 98.]

11.28.220 Persons disqualified as sureties. No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as surety on any bond required to be taken in any proceeding in probate. [1965 c 145 § 11.28.220. Prior: 1917 c 156 § 71; RRS § 1441; prior: 1891 p 383 § 14; Code 1881 § 1409; 1863 p 221 § 128; 1860 p 183 § 95.]

11.28.230 Bond not void for want of form—Successive recoveries. No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted. [1965 c 145 § 11.28.230. Prior: 1917 c 156 § 73; RRS § 1443; prior: Code 1881 §§ 1412, 1397; 1877 p 211 § 4; 1854 p 219 § 489.]

Bond not to fail for want of form or substance: RCW 19.72.170.

11.28.235 Limitation of action against sureties. All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal. [1965 c 145 § 11.28.235. Prior: 1917 c 156 § 80; RCW 11.28.310; RRS § 1450; prior: 1891 p 385 § 21; Code 1881 § 1431; 1854 p 274 § 42.]

11.28.237 Notice of appointment as personal representative, pendency of probate. Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate whose names and addresses are known to him, and proof of such mailing or service shall be made by affidavit and filed in the cause. [1977 ex.s. c 234 § 6; 1974 ex.s. c 117 § 30; 1969 c 70 § 2; 1965 c 145 § 11.28.237. Prior: 1955 c 205 § 13, part; RCW 11.76.040, part.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.238 Notice of appointment as personal representative—Notice to department of revenue. Duty of personal representative to notify department of revenue of administration; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.28.240 Request for special notice of proceedings in probate. At any time after the issuance of letters testamentary or of administration or certificate of qualification upon the estate of any decedent, any person interested in the estate as an heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or the lawyer for the heir, devisee, distributee, legatee, or creditor may serve upon the personal representative or upon the lawyer for the personal representative, and file with the clerk of the court wherein the administration of the estate is pending, a written request stating that the person desires special notice of any or all of the following named matters, steps or proceedings in the administration of the estate, to wit:

(1) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.

(2) Petitions for any order of solvency or for nonintervention powers.

(3) Filing of accounts.

(4) Filing of petitions for distribution.

(5) Petitions by the personal representative for family allowances and homesteads.

(6) The filing of a declaration of completion.

(7) The filing of the inventory.

(8) Notice of presentation of personal representative's claim against the estate.

(9) Petition to continue a going business.

(10) Petition to borrow upon the general credit of the estate.

(11) Petition for judicial proceedings under chapter 11.96 RCW.

(12) Petition to reopen an estate.

(13) Intent to distribute estate assets, other than distributions in satisfaction of specific bequests or legacies of specific dollar amounts.

(14) Intent to pay attorney's or personal representative's fees.

The requests shall state the post office address of the heir, devisee, distributee, legatee or creditor, or his or her lawyer, and thereafter a brief notice of the filing of any of the petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other tangible personal property which will incur expense or loss by keeping, shall be addressed to the heir, devisee, distributee, legatee or creditor, or his or her lawyer, at the post office address stated in the request, and deposited in the United States post office, with prepaid postage, at least ten days before the hearing of the petition, account or claim or of the proposed distribution or payment of fees; or personal service of the notices may be made on the heir, devisee, distributee, legatee, creditor, or lawyer, not less than five days before the hearing, and the personal service shall have the same effect as deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of the petition, account or claim or of the proposed distribution or payment of fees. If the notice has been regularly given, any distribution or payment of fees and any order or judgment, made in accord therewith is final and conclusive. [1985 c 30 § 5. Prior: 1984 c 149 § 8; 1965 c 145 § 11.28.240; prior: 1941 c 206 § 1; 1939 c 132 § 1; 1917 c 156 § 64; Rem. Supp. 1941 § 1434.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Award in lieu of homestead—Notice of hearing: RCW 11.52.014.

Awards—Closure of estate: RCW 11.52.050.

Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.

Claim of personal representative: RCW 11.40.140.

Continuation of decedent's business: RCW 11.48.025.

Purchase of claims by personal representative: RCW 11.48.080.

Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.

Sales, exchanges, leases, mortgages and borrowing: Chapter 11.56 RCW.

Solvency, order of: RCW 11.68.010.

11.28.250 Revocation of letters—Causes. Whenever the court has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after notice and hearing to revoke such letters. The manner of the notice and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such personal representative shall at once cease, and it shall be the duty of the court to immediately appoint some other personal representative, as in this title provided. [1965 c 145 § 11.28.250. Prior: 1917 c 156 § 74; RRS § 1444; prior: Code 1881 § 1414; 1863 p 218 § 112; 1860 p 186 § 114.]

Absentee estates, removal of trustee: RCW 11.80.060.

Accounting on revocation of letters: RCW 11.28.290.

Administrator de bonis non: RCW 11.28.280.

Cancellation of letters of administration: RCW 11.28.160.

Effect on compensation of personal representative who fails to discharge duties: RCW 11.48.210.

Nonintervention wills—Procedure when executor recreant to trust: RCW 11.68.030.

Notice to creditors when personal representative removed: RCW 11.40.150.

Revocation of letters
by discovery of will: RCW 11.28.150.
upon conviction of crime or becoming of unsound mind: RCW 11.36.010.

11.28.260 Revocation of letters—Proceedings in court or chambers. The applications and acts authorized by RCW 11.28.250 may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court. [1965 c 145 § 11.28.260. Prior: 1917 c 156 § 75; RRS § 1445; prior: 1891 p 384 § 17; Code 1881 § 1413; 1877 p 213 § 4.]

11.28.270 Powers of remaining personal representatives if letters to associates revoked. If there be more than one personal representative of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any way become disqualified, those who remain shall perform all the duties required by law. [1965 c 145 § 11.28.270. Prior: 1917 c 156 § 76; RRS § 1446; prior: Code 1881 § 1427; 1854 p 273 § 38.]

11.28.280 Administrator de bonis non. If the personal representative of an estate dies, resigns, or the letters are revoked before the settlement of the estate, letters of administration of the estate remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator de bonis non shall perform like duties and incur like liabilities as the former personal representative, and shall serve as administrator with will annexed de bonis non in the event a will has been admitted to probate. Said administrator de bonis non may, upon satisfying the requirements and complying with the procedures provided in chapter 11.68 RCW, administer the estate of the decedent without the intervention of court. [1974 ex.s. c 117 § 26; 1965 c 145 § 11.28.280. Prior: 1955 c 205 § 8; 1917 c 156 § 77; RRS § 1447; prior: Code 1881 § 1428.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.290 Accounting on death, resignation, or revocation of letters. If any personal representative resign, or his letters be revoked, or he die, he or his representatives shall account for, pay, and deliver to his successor or to the surviving or remaining personal representatives, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order on

final settlement with such personal representative or his legal representatives. [1965 c 145 § 11.28.290. Prior: 1917 c 156 § 78; RRS § 1448; prior: Code 1881 § 1429; 1854 p 273 § 40.]

11.28.300 Proceedings against delinquent personal representative. The succeeding administrator, or remaining personal representative may proceed by law against any delinquent former personal representative, or his personal representatives, or the sureties of either, or against any other person possessed of any part of the estate. [1965 c 145 § 11.28.300. Prior: 1917 c 156 § 79; RRS § 1449; prior: 1891 p 384 § 20; Code 1881 § 1430; 1854 p 273 § 41.]

Limitation of action against sureties: RCW 11.28.235.

11.28.330 Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing. If no personal representative is appointed to administer the estate of a decedent, the person obtaining the adjudication of testacy, or intestacy and heirship, shall, cause written notice of said adjudication to be mailed to each heir, legatee, and devisee of the decedent, which notice shall contain the name of the decedent's estate and the probate cause number, and shall:

(1) State the name and address of the applicant;

(2) State that on the . . . . day of . . . . . , 19. . ., the applicant obtained an order from the superior court of . . . . . county, state of Washington, adjudicating that the decedent died intestate, or testate, whichever shall be the case;

(3) In the event the decedent died testate, enclose a copy of his will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;

(4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause. [1974 ex.s. c 117 § 31.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.340 Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications. Unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing or service of the notice required in RCW 11.28.330 any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed or on whom served, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW for the purpose of:

(1) Establishing the decedent's will as his last will and testament and persons entitled to receive his estate thereunder; or

(2) Establishing the fact that the decedent died intestate, and those persons entitled to receive his estate as his heirs at law.

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters testamentary or of administration shall be filed more than four months after the date of the adjudication of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications.

Any person paying, delivering, transferring, or issuing property to the person entitled thereto under an adjudication of testacy or intestacy and heirship that is deemed the equivalent of a final decree of distribution as set forth in this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent. [1988 c 29 § 1; 1977 ex.s. c 234 § 7; 1974 ex.s. c 117 § 32.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Chapter 11.32
SPECIAL ADMINISTRATORS

Sections

11.32.010 Appointment. When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case

of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust until he shall be otherwise ordered by the appellate court. [1965 c 145 § 11.32.010. Prior: 1917 c 156 § 81; RRS § 1451; prior: 1891 p 384 § 19; Code 1881 § 1419; 1863 p 222 § 137; 1860 p 184 § 104.]

11.32.020 Bond. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the state of Washington, with conditions as required of an executor or in other cases of administration: PROVIDED, That in all cases where a bank or trust company authorized to act as administrator is appointed special administrator or acts as special administrator under an appointment as such heretofore made, no bond shall be required. [1965 c 145 § 11.32.020. Prior: 1963 c 46 § 2; 1917 c 156 § 82; RRS § 1452; prior: Code 1881 § 1420; 1863 pp 220, 222 §§ 126, 138; 1860 pp 183, 184 §§ 93, 105.]

Bond of personal representative: RCW 11.28.185.

11.32.030 Powers and duties. Such special administrator shall collect all the goods, chattels, money, effects, and debts of the deceased, and preserve the same for the personal representative who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court. The appointment may be for a specified time, to perform duties respecting specific property, or to perform particular acts, as stated in the order of appointment. Such special administrator shall be allowed such compensation for his services as the said court shall deem reasonable, together with reasonable fees for his attorney. [1965 c 145 § 11.32.030. Prior: 1917 c 156 § 83; RRS § 1453; prior: Code 1881 § 1421; 1863 p 222 § 139; 1860 p 185 § 106.]

11.32.040 Succession by personal representative. Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he shall forthwith deliver to the personal representative all the goods, chattels, money, effects, and debts of the deceased in his hands, and the personal representative may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former personal representative. The estate shall be liable for obligations incurred by the special administrator pursuant to the order of appointment or approved by the court. [1965 c 145 § 11.32.040. Prior: 1917 c 156 § 84; RRS § 1454; prior: Code 1881 § 1422; 1863 p 233 § 140; 1860 p 185 § 107.]

11.32.050 Not liable to creditors. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [1965 c 145 § 11.32.050. Prior: 1917 c 156 § 85; RRS § 1455; prior: Code 1881 § 1423; 1863 p 223 § 141; 1860 p 185 § 108.]

11.32.060 To render account. The special administrator shall also render an account, under oath, of his proceedings, in like manner as other administrators are required to do. [1965 c 145 § 11.32.060. Prior: 1917 c 156 § 86; RRS § 1456; prior: Code 1881 § 1424; 1863 p 223 § 142; 1860 p 185 § 109.]

Settlement of estates: Chapter 11.76 RCW.

Chapter 11.36
QUALIFICATIONS OF PERSONAL REPRESENTATIVES

Sections

11.36.010 Parties disqualified—Result of disqualification after appointment. The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or persons who have been convicted of any felony or of a misdemeanor involving moral turpitude: PROVIDED, That trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of decedents' or incompetents' estates upon petition of any person having a right to such appointment and may act as executors or guardians when so appointed by will: PROVIDED FURTHER, That professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys may act as personal representatives. No trust company or national bank may qualify as such executor or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank. When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters. A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative shall file a bond to be approved by the court. [1983 c 51 § 1; 1983 c 3 § 14; 1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

Rules of court: Counsel fees: SPR 98.12W.

Banks and trust companies may act as guardian: RCW 11.88.020.

Procedure during minority or absence of executor: RCW 11.28.040.

Trust company may act as personal representative: RCW 30.08.150.

11.36.021 Trustees—Who may serve. (1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(e) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of any felony or a misdemeanor involving moral turpitude; and

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary. [1991 c 72 § 1; 1985 c 30 § 6. Prior: 1984 c 149 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.40
CLAIMS AGAINST ESTATE

Sections

Action on claim not acted on—Contribution: RCW 11.76.170.

Contingent or disputed claims, procedure: RCW 11.76.190.

Evidence, transaction with person since deceased: RCW 5.60.030.

Guardianship—Claims: RCW 11.92.035.

Incompetent, deceased, claims against estate of: RCW 11.88.150.

Judgment against executor or administrator, effect: RCW 4.56.050.

Liability of personal representative: RCW 11.76.160.

Limitation of actions: Chapter 4.16 RCW.

Order maturing claim not due: RCW 11.76.180.

Order of payment of debts: RCW 11.76.110.

Payment of claims where estate insufficient: RCW 11.76.150.

Quasi-community property—Lifetime transfers—Claims by surviving spouse: RCW 26.16.240.

Sale, etc., of property—Priority as to realty or personalty: RCW 11.56.015.

Survival of actions: Chapter 4.20 RCW.

Tax constitutes debt—Priority of lien: RCW 82.32.240.

11.40.010 Notice to creditors—Manner—Failure to file. Every personal representative shall, after appointment and qualification, give a notice to the creditors of the deceased, stating such appointment and qualification as personal representative and requiring all persons having claims against the deceased to serve the same on the personal representative or the estate's attorney of record, and file an executed copy thereof with the clerk of the court, within four months after the date of the first publication of such notice described in this section or within four months after the date of the filing of the copy of such notice with the clerk of the court, whichever is the later, or within the time otherwise provided in RCW 11.40.013. The four-month time period after the later of the date of the first publication of the notice to creditors or the date of the filing of such notice with the clerk of the court is referred to in this chapter as the "four-month time limitation." Such notice shall be given as follows:

(1) The personal representative shall give actual notice, as provided in RCW 11.40.013, to such creditors who become known to the personal representative within such four-month time limitation;

(2) The personal representative shall cause such notice to be published once in each week for three successive weeks in the county in which the estate is being administered; and

(3) The personal representative shall file a copy of such notice with the clerk of the court.

Except as otherwise provided in RCW 11.40.011 or 11.40.013, any claim not filed within the four-month time limitation shall be forever barred, if not already barred by any otherwise applicable statute of limitations. Proof by affidavit of the giving and publication of such notice shall be filed with the court by the personal representative. [1991 c 5 § 1; 1989 c 333 § 1; 1974 ex.s. c 117 § 33; 1967 c 168 § 7; 1965 c 145 § 11.40.010. Prior: 1923 c 142 § 3; 1917 c 156 § 107; RRS § 1477; prior: Code 1881 § 1465; 1860 p 195 § 157; 1854 p 280 § 78.]

Application—Effective date—1989 c 333: "This act is necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1989]. This act shall apply to probate proceedings that are open on or are commenced after the effective date, except that section 5 of this act shall apply only to decedents dying after the effective date." [1989 c 333 § 9.] This act consists of the enactment of RCW 11.40.012, 11.40.013, 11.40.014, and 11.40.015, and the 1989 c 333 amendment of RCW 11.40.010, 11.40.011, 11.40.030, and 4.16.200. Section 5 of this act is RCW 11.40.014.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Publication of legal notices: Chapter 65.16 RCW.
Settlement without intervention, notice to creditors: RCW 11.68.010.

11.40.011 Service and filing of claims involving liability or casualty insurance—Limitations. The time limitations under this chapter for serving and filing of claims shall not accrue to the benefit of any liability or casualty insurer as to claims against the deceased and/or the marital community of which the deceased was a member and such claims, subject to applicable statutes of limitation, may at any time be:

(1) Served on the personal representative, or the attorney for the estate; or

(2) If the personal representative shall have been discharged, then the claimant as a creditor may cause a new personal representative to be appointed and the estate to be reopened in which case service may be had upon the new personal representative or his attorney of record.

Claims may be served and filed as herein provided, notwithstanding the conclusion of any probate proceedings: PROVIDED, That the amount of recovery under such claims shall not exceed the amount of applicable insurance coverages and proceeds: AND PROVIDED FURTHER, That such claims so served and filed shall not constitute a cloud or lien upon the title to the assets of the estate under probate nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate subject to such probate. Nothing in this section serves to extend the applicable statute of limitations regardless of the appointment or failure to have appointed a personal representative for an estate. [1989 c 333 § 2; 1983 c 201 § 1; 1967 ex.s. c 106 § 3.]

Reviser's note: 1967 c 168 § 8 added a new section to chapter 145, Laws of 1965 and to chapter 11.40 RCW to be designated as RCW 11.40.011. 1967 c 168 § 8 was repealed by 1967 ex.s. c 106 § 4.

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

Applicability—1983 c 201: "The provisions of this 1983 amendatory act apply to causes of actions arising on or after July 24, 1983." [1983 c 201 § 2.]

Effective date—1967 ex.s. c 106: See note following RCW 11.56.110.

11.40.012 Ascertainable creditors—Personal representative's duty to discover—Presumption. The personal representative shall exercise reasonable diligence to discover, within the four-month time limitation, reasonably ascertainable creditors of the deceased. The personal representative is deemed to have exercised reasonable diligence to ascertain the creditors upon (1) conducting, within the four-month time limitation, a reasonable review of the deceased's correspondence (including correspondence received after the date of death) and financial records (including checkbooks, bank statements, income tax returns, etc.), which are in the possession of or reasonably available to the personal representative, and (2) having made inquiry of the deceased's heirs, devisees, and legatees regarding claimants. If the personal representative conducts the review and makes an inquiry, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the deceased and creditors not ascertained in the review or in an inquiry are presumed not reasonably ascertainable. These presumptions may be rebutted only by clear, cogent, and convincing evidence. The personal representative may evidence the review and inquiry by filing an affidavit to the effect in the probate proceeding. The personal representative may also petition the superior court having jurisdiction for an order declaring that the personal representative has made a review and inquiry and that any creditors not known to the personal representative after the review and inquiry are not reasonably ascertainable. Such petition and hearing shall be under the procedures provided in chapter 11.96 RCW, provided that the notice specified under RCW 11.96.100 shall also be given by publication. [1989 c 333 § 3.]

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

11.40.013 Notice to creditors—Time limits. The actual notice described in RCW 11.40.010(1), as to creditors becoming known to the personal representative within the four-month time limitation, shall be given the creditors by personal service or regular first class mail, addressed to the creditor's last known address, postage prepaid. The actual notice shall be given before the later of the expiration of the four-month time limitation or thirty days after any creditor became known to the personal representative within the four-month time limitation. Any known creditor is barred unless the creditor has filed a claim, as otherwise provided in this chapter, within the four-month time limitation or within thirty days following the date of actual notice to that creditor, whichever is later. If notice is given by mail, the date of mailing shall be the date of notice. [1989 c 333 § 4.]

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

11.40.014 Claims against decedent—Time limits. Whether or not notice under RCW 11.40.010 has been given or should have been given, any person having a claim against the decedent who has not filed a claim within eighteen months from the date of the decedent's death shall be forever barred from making a claim against the decedent, or commencing an action against the decedent, if such claim or action is not already barred by any otherwise applicable statute of limitation[s]. However, this eighteen-month limitation does not apply (1) to claims described in RCW 11.40.011, (2) to any claims where the personal representative has not given the actual notice described in RCW 11.40.010(1) and during the eighteen-month period following the date of death, partial performance has been made on the obligation underlying the claim, or (3) to any claims where no personal representative has been appointed within twelve months after the date of death. Any otherwise applicable statute of limitations shall apply without regard to the tolling provisions of RCW 4.16.190. Any claim filed within eighteen months from the date of the decedent's death and not otherwise barred under this chapter shall be made in the form and manner provided under RCW 11.40.010, as if the notice under such section had been given. [1989 c 333 § 5.]

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

11.40.015 Notice—Form. Notice under RCW 11.40.010 shall be in substantially the following form:

CAPTION OF CASE	)	No.
	)	NOTICE TO CREDITORS
. . . . .	)	

The personal representative named below has been appointed and has qualified as personal representative of this estate. Persons having claims against the deceased must, prior to the time such claims would be barred by any otherwise applicable statute of limitations, serve their claims on the personal representative or the attorneys of record at the address stated below and file an executed copy of the claim with the Clerk of this Court within four months after the date of first publication of this notice or within four months after the date of the filing of the copy of this Notice with the Clerk of the Court, whichever is later or, except under those provisions included in RCW 11.40.011 or 11.40.013, the claim will be forever barred.

DATE OF FILING COPY OF NOTICE TO CREDITORS with Clerk of Court: . . . . . .

DATE OF FIRST PUBLICATION: . . . . . .

. . . . . ,

Personal Representative

Address

Attorney for Estate:
Address:
Telephone:

[1989 c 333 § 6.]

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

11.40.020 Claims—Contents—Form—Affidavit not required. Every claim shall be signed by the claimant, or his attorney, or any person who is authorized to sign claims on his, her, or its behalf, and shall contain the following information:

(1) The name and address of the claimant;

(2) The name, business address (if different from that of the claimant), and nature of authority of any person signing the claim on behalf of the claimant;

(3) A written statement of the facts or circumstances constituting the basis upon which the claim is submitted;

(4) The amount of the claim;

(5) If the claim is secured, unliquidated or contingent, or not yet due, the nature of the security, the nature of the uncertainty, and due date of the claim: PROVIDED HOWEVER, That failure to describe correctly the security, nature of any uncertainty, or the due date of a claim not yet due, if such failure is not substantially misleading, does not invalidate the presentation made.

Claims need not be supported by affidavit. [1974 ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 108; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.030 Allowance or rejection of claims—Time limitation for rejection—Notification of rejection—Requirements—Compromise of claim. (1) Unless the personal representative shall, within two months after the expiration of the four-month time limitation, or within two months after receipt of an otherwise timely claim filed after expiration of the four-month time limitation, whichever is later, have obtained an order extending the time for his allowance or rejection of claims timely and properly served and filed, all claims not exceeding one thousand dollars presented within the time and in the manner provided in RCW 11.40.010, 11.40.013, or 11.40.020 as now or hereafter amended, shall be deemed allowed and may not thereafter be rejected, unless the personal representative shall, within two months after the expiration of the four-month time limitation, or as to an otherwise timely claim filed after expiration of the four-month time limitation, within two months after receipt of such claim, or within any extended time, notify the claimant of its rejection, in whole or in part.

(2) When a claim exceeding one thousand dollars is presented within the time and in the manner provided in RCW 11.40.010 and 11.40.020 as now or hereafter amended, it shall be the duty of the personal representative to indorse thereon his allowance or rejection. A claimant after a claim has been on file for at least thirty days may notify the personal representative that he will petition the court to have the claim allowed. If the personal representative fails to file an allowance or rejection of such claim twenty days after the receipt of such notice, the claimant may note the matter up for hearing and the court shall hear the matter and determine whether the claim should be allowed or rejected, in whole or in part. If at the hearing the claim is substantially allowed the court may allow petitioner reasonable attorney's fees of not less than one hundred dollars chargeable against the estate.

(3) If the personal representative shall reject the claim, in whole or in part, he shall notify the claimant of said rejection and file in the office of the clerk, an affidavit showing such notification and the date thereof. Said notification shall be by personal service or certified mail addressed to the claimant at his address as stated in the claim; if a person other than the claimant shall have signed said claim for or on behalf of the claimant, and said person's business address as stated in said claim is different from that of the claimant, notification of rejection shall also be made by personal service or certified mail upon said person; the date of the postmark shall be the date of notification. The notification of rejection shall advise the claimant, and the person making claim on his, her, or its behalf, if any, that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, and that otherwise the claim will be forever barred.

(4) The personal representative may, either before or after rejection of any claim compromise said claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that such compromise is in the best interests of the estate. [1989 c 333 § 7; 1977 ex.s. c 234 § 8; 1974 ex.s. c 117 § 35; 1965 c 145 § 11.40.030. Prior: 1963 c 43 § 1; 1917 c 156 § 109; RRS

§ 1479; prior: Code 1881 § 1469; 1873 p 285 § 156; 1854 p 281 § 82.]

Rules of court: SPR 98.08W, 98.10W, 98.12W.

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.040 Effect of allowance. Every claim which has been allowed by the personal representative shall be ranked among the acknowledged debts of the estate to be paid in the course of administration. [1974 ex.s. c 117 § 36; 1965 c 145 § 11.40.040. Prior: 1917 c 156 § 110; RRS § 1480; prior: Code 1881 § 1470; 1854 p 281 § 83.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Order of payment of debts: RCW 11.76.110.

11.40.060 Suit on rejected claim. When a claim is rejected by the personal representative, the holder must bring suit in the proper court against the personal representative within thirty days after notification of the rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, otherwise the claim shall be forever barred. [1974 ex.s. c 117 § 37; 1965 c 145 § 11.40.060. Prior: 1917 c 156 § 112; RRS § 1482; prior: Code 1881 § 1472; 1873 p 285 § 159; 1869 p 166 § 665; 1854 p 281 § 84.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.070 Outlawed claims. No claim shall be allowed by the personal representative or court which is barred by the statute of limitations. [1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

11.40.080 Claims must be presented. No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as herein provided. Nothing in this chapter affects the notice under RCW 82.32.240. [1988 c 64 § 22; 1965 c 145 § 11.40.080. Prior: 1917 c 156 § 114; RRS § 1484; prior: Code 1881 § 1474; 1854 p 281 § 86.]

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

11.40.090 Limitation tolled by vacancy. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed. [1965 c 145 § 11.40.090. Prior: 1917 c 156 § 115; RRS § 1485; prior: Code 1881 § 1475; 1854 p 281 § 87.]

11.40.100 Action pending at death of testator—Substitution of personal representative as defendant. If any action be pending against the testator or intestate at the time of his death, the plaintiff shall within four months after first publication of notice to creditors, or the filing of a copy of such notice, whichever is later, serve on the personal representative a motion to have such personal representative, as such, substituted as defendant in such action, and, upon the hearing of such motion, such personal representative shall be so substituted, unless, at or prior to such hearing, the claim of plaintiff, together with costs, be allowed by the personal representative and court. After the substitution of such personal representative, the court shall proceed to hear and determine the action as in other civil cases. [1974 ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.110 Partial allowance of claim—Costs. Whenever any claim shall have been filed and presented to a personal representative, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the personal representative unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs. [1974 ex.s. c 117 § 38; 1965 c 145 § 11.40.110. Prior: 1917 c 156 § 117; RRS § 1487; prior: Code 1881 § 1477; 1854 p 282 § 89.]

Rules of court: SPR 98.08W.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.120 Effect of judgment against personal representative. The effect of any judgment rendered against any personal representative shall be only to establish the amount of the judgment as an allowed claim. [1965 c 145 § 11.40.120. Prior: 1917 c 156 § 118; RRS § 1488; prior: Code 1881 § 1478; 1854 p 282 § 90.]

11.40.130 Judgment against decedent—Payment. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the personal representative, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: PROVIDED, HOWEVER, That if it be a lien on any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the personal representative for any surplus in his hands. [1965 c 145 § 11.40.130. Prior: 1917 c 156 § 119; RRS § 1489; prior: Code 1881 § 1479; 1854 p 292 § 91.]

11.40.140 Claim of personal representative. If the personal representative is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be filed and presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. This section shall apply to nonintervention and all other wills. [1965 c 145 § 11.40.140. Prior: 1917 c 156 § 120; RRS § 1490; prior: Code 1881 § 1482; 1854 p 283 § 94.]

Request for special notice in proceedings in probate: RCW 11.28.240.

11.40.150 Notice to creditors when personal representative resigns, dies, or is removed. In case of resignation, death or removal for any cause of any personal representative, and the appointment of another or others, after notice has been given by publication as required by RCW 11.40.010, by such personal representative first appointed, to persons to file their claims against the decedent, it shall be the duty of the successor or personal representative to cause notice of such resignation, death or removal and such new appointment to be published two successive weeks in a legal newspaper published in the county in which the estate is being administered, but the time between the resignation, death or removal and such publication shall be added to the time within which claims shall be filed as fixed by the published notice to creditors unless such time shall have expired before such resignation or removal or death: PROVIDED, HOWEVER, That no such notice shall be required if the period for filing claims was fully expired during the time that the former personal representative was qualified. [1965 c 145 § 11.40.150. Prior: 1939 c 26 § 1; 1917 c 156 § 121; RRS § 1491; prior: 1891 c 155 § 28; Code 1881 § 1485; 1873 p 288 § 172; 1867 p 106 § 3.]

Chapter 11.44
INVENTORY AND APPRAISEMENT

Sections

Partnerships, inventory and appraisement: RCW 11.64.002.

11.44.015 Inventory. Within three months after his appointment, unless a longer time shall be granted by the court, every personal representative shall make and return upon oath into the court a true inventory of all of the property of the estate which shall have come to his possession or knowledge, including a statement of all encumbrances, liens or other secured charges against any item. Such property shall be classified as follows:

(1) Real property, by legal description and assessed valuation of land and improvements thereon;

(2) Stocks and bonds;

(3) Mortgages, notes, and other written evidences of debt;

(4) Bank accounts and money;

(5) Furniture and household goods;

(6) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative. [1967 c 168 § 9; 1965 c 145 § 11.44.015. Formerly RCW 11.44.010, part and 11.44.020, part.]

Inventory, settlement of estates without administration: RCW 11.68.010.

Inventory and appraisement on death of partner—Filing: RCW 11.64.002.

Right to wind up partnership: RCW 25.04.370.

11.44.025 Additional inventory. Whenever any property of the estate not mentioned in the inventory comes to the knowledge of a personal representative, he shall cause the same to be inventoried and appraised and shall make and return upon oath into the court a true inventory of said property within thirty days after the discovery thereof, unless a longer time shall be granted by the court. [1974 ex.s. c 117 § 48; 1965 c 145 § 11.44.025. Prior: 1917 c 156 § 100; RCW 11.44.060; RRS § 1470; prior: Code 1881 § 1453; 1873 p 281 § 138; 1854 p 277 § 64.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.44.035 Inventory or appraisement may be contradicted. In an action against the personal representative where his administration of the estate, or any part thereof, is put in issue and the inventory of the estate returned by him, or the appraisal thereof is given in evidence, the same may be contradicted or avoided by evidence. Any party in interest in the estate may challenge the inventory or appraisement at any stage of the probate proceedings. [1965 c 145 § 11.44.035. Prior: Code 1881 § 721; 1877 p 146 § 725; 1869 p 166 § 662; RCW 11.48.170; RRS § 970.]

11.44.050 Inventory—Failure to return—Revocation of letters. If any personal representative shall neglect or refuse to return the inventory within the period prescribed, or within such further time as the court may allow, the court may revoke the letters testamentary or of administration; and the personal representative shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect. [1965 c 145 § 11.44.050. Prior: 1917 c 156 § 99; RRS § 1469; prior: Code 1881 § 1457; 1873 p 281 § 138; 1854 p 278 § 69.]

11.44.066 Personal representative—Duties—Assistants—Filing—Copies. Within the time required to file an inventory as provided in RCW 11.44.015, the personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges thereon. The personal representative may employ a qualified and disinterested person to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The appraisement may, but need not be, filed in the probate cause: PROVIDED HOWEVER, That upon receipt of a written request for a copy of said inventory and appraisement from any heir, legatee, devisee or unpaid creditor who has filed a claim, or from the department of revenue, the personal representative shall furnish to said person, a true and correct copy thereof. [1990 c 180 § 1; 1974 ex.s. c 117 § 49.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Estate and transfer tax act: Chapter 83.100 RCW.

11.44.070 Persons assisting in appraisement—Compensation—Refund. The amount of the fee to be paid

to any persons assisting the personal representative in any appraisement shall be determined by the personal representative: PROVIDED HOWEVER, That the reasonableness of any such compensation shall, at the time of hearing on any final account as provided in chapter 11.76 RCW or on a request or petition under RCW 11.68.100 or 11.68.110, be reviewed by the court in accordance with the provisions of RCW 11.68.100, and if the court determines the compensation to be unreasonable, a personal representative may be ordered to make appropriate refund. [1974 ex.s. c 117 § 50; 1967 c 168 § 10; 1965 c 145 § 11.44.070. Formerly RCW 11.44.010, part.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Effective date—1965 c 145: See RCW 11.99.010.

11.44.085 Claims against personal representative included. The naming or the appointment of any person as personal representative shall not operate as a discharge from any just claim which the testator or intestate had against the personal representative, but the claim shall be included in the inventory and the personal representative shall be liable to the same extent as he would have been had he not been appointed personal representative. [1965 c 145 § 11.44.085. Prior: 1917 c 156 § 97; RCW 11.44.030; RRS § 1467; prior: Code 1881 § 1449; 1860 p 63 § 5; 1854 p 277 § 60.]

11.44.090 Discharge of debt—Specific bequest and included. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will or against any person shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies. [1965 c 145 § 11.44.090. Prior: 1917 c 156 § 98; RCW 11.44.040; RRS § 1468; prior: Code 1881 § 1450; 1854 p 277 § 61.]

Chapter 11.48

PERSONAL REPRESENTATIVES—GENERAL PROVISIONS—ACTIONS BY AND AGAINST

Sections

***Rules of court:** Executors*
compromises and settlements: SPR 98.08W, 98.10W.
fees, application for, notice: SPR 98.12W.

Costs against fiduciaries: RCW 4.84.150.

District judge without jurisdiction as to actions against personal representative: RCW 3.66.030.

Ejectment and quieting title: Chapter 7.28 RCW.

Evidence, transaction with person since deceased: RCW 5.60.030.

Execution of writ—Levy: RCW 6.17.130.

Execution on judgments in name of personal representative: RCW 6.17.030.

Executor, administrator, subject to garnishment: RCW 6.27.050.

*Fiduciary may sue in own name: **Rules of court:** CR 17.*

Frauds, statute of, agreement of personal representative to answer damages from own estate: RCW 19.36.010.

Investment in certain federal securities authorized: Chapter 39.60 RCW.

Judgment against executor, administrator, effect: RCW 4.56.050.

Larceny: RCW 9A.56.100.

Limitation of actions
against executor, administrator for misconduct: RCW 4.16.110.
generally: Chapter 4.16 RCW.
recovery of realty sold by personal representative: RCW 4.16.070.
statutes tolled by death, personal disability, reversal of judgment: RCW 4.16.190, 4.16.200, 4.16.240.

Real estate broker's license requirement, exemption: RCW 18.85.110.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Setoff, by and against executors, administrators: RCW 4.32.130, 4.32.140, 4.56.050.

Survival of actions: Chapter 4.20 RCW.

"Taxable person," personal representative defined as: RCW 82.04.030.

*Unknown heirs, pleading, lis pendens, etc: RCW 4.28.140 through 4.28.160; **Rules of court:** CR 10.*

Witnesses, competency in actions involving representatives or fiduciaries: RCW 5.60.030.

11.48.010 General powers and duties. It shall be the duty of every personal representative to settle the estate in his hands as rapidly and as quickly as possible, without sacrifice to the estate. He shall collect all debts due the deceased and pay all debts as hereinafter provided. He shall be authorized in his own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character. [1965 c 145 § 11.48.010. Prior: 1917 c 156 § 147; RRS § 1517; prior: Code 1881 § 1528; 1854 p 291 § 141.]

11.48.020 Right to possession and management of estate. Every personal representative shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings and fixtures thereon, which are under his control. [1965 c 145 § 11.48.020. Prior: 1917 c 156 § 94; RRS §

1464; prior: Code 1881 § 1444; 1860 p 189 § 132; 1854 p 278 § 65.]

When title vests: RCW 11.04.250.

11.48.025 Continuation of decedent's business. Upon a showing of advantage to the estate the court may authorize a personal representative to continue any business of the decedent, other than the business of a partnership of which the decedent was a member: PROVIDED, That if decedent left a nonintervention will or a will specifically authorizing a personal representative to continue any business of decedent, and his estate is solvent, or a will providing that the personal representative liquidate any business of decedent, this section shall not apply.

The order shall specify:

(1) The extent of the authority of the personal representative to incur liabilities;

(2) The period of time during which he may operate the business;

(3) Any additional provisions or restrictions which the court may, at its discretion, include.

Any interested person may for good cause require the personal representative to show cause why the authority granted him should not be limited or terminated. The order to show cause shall set forth the manner of service thereof and the time and place of hearing thereon. [1965 c 145 § 11.48.025. Prior: 1955 c 98 § 1.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.48.030 Chargeable with whole estate. Every personal representative shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession. He shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his fault. [1965 c 145 § 11.48.030. Prior: 1917 c 156 § 155; RRS § 1525; prior: Code 1881 § 1538; 1860 p 210 § 241; 1854 p 295 § 161.]

11.48.040 Not chargeable on special promise to pay decedent's debts unless in writing. No personal representative shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such personal representative, or by some other person by him thereunto specially authorized. [1965 c 145 § 11.48.040. Prior: 1917 c 156 § 154; RRS § 1524; prior: Code 1881 § 1537; 1854 p 295 § 160.]

Agreement to answer damages from own estate must be in writing: RCW 19.36.010.

11.48.050 Allowance of necessary expenses. He shall be allowed all necessary expenses in the care, management and settlement of the estate. [1965 c 145 § 11.48.050. Prior: 1917 c 156 § 156; RRS § 1526; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: SPR 98.12W.

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

Broker's fee and closing expenses—Sale, mortgage or lease: RCW 11.56.265.

Compensation—Attorney's fee: RCW 11.48.210.

Monument, expense of: RCW 11.76.130.

Order of payment of debts: RCW 11.76.110.

Will contests, costs: RCW 11.24.050.

11.48.060 May recover for embezzled or alienated property of decedent. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate. [1965 c 145 § 11.48.060. Prior: 1917 c 156 § 101; RRS § 1471; prior: Code 1881 § 1455; 1854 p 278 § 67.]

Larceny: RCW 9A.56.100.

11.48.070 Concealed or embezzled property—Proceedings for discovery. The court shall have authority to bring before it any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of decedents or incompetents subject to administration under this title, or who has in his possession or within his knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he be found innocent of the charges he shall be entitled to recover costs of the estate, which costs shall be fees and mileage of witnesses, statutory attorney's fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he refuse to answer such interrogatories as may be put to him touching such matters, the court may commit him to the county jail, there to remain until he shall be willing to make such answers. [1965 c 145 § 11.48.070. Prior: 1917 c 156 § 102; RRS § 1472; prior: 1891 p 385 §§ 22, 23; Code 1881 §§ 1456, 1457; 1854 p 278 §§ 68, 69.]

Guardianship—Concealed or embezzled property—Proceedings for discovery: RCW 11.92.185.

Larceny: RCW 9A.56.100.

11.48.080 Uncollectible debts—Liability—Purchase of claims by personal representative. No personal representative shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault. No personal representative shall purchase any claim against the estate he represents, but the personal representative may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the personal representative under such terms as the court shall order, and such claims shall thereafter be paid as are other

claims, but the personal representative shall not profit thereby. [1965 c 145 § 11.48.080. Prior: 1917 c 156 § 157; RRS § 1527; prior: Code 1881 § 1540; 1854 p 295 § 163.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.48.090 Actions for recovery of property and on contract. Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against personal representatives in all cases in which the same might have been maintained by and against their respective testators or intestates. [1965 c 145 § 11.48.090. Prior: 1917 c 156 § 148; RRS § 1518; prior: Code 1881 § 1529; 1860 p 206 § 222; 1854 p 291 § 142.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Survival of actions: Chapter 4.20 RCW.

11.48.120 Action on bond of previous personal representative. Any personal representative may in his own name, for the benefit of all parties interested in the estate, maintain actions on the bond of a former personal representative of the same estate. [1965 c 145 § 11.48.120. Prior: 1917 c 156 § 151; RRS § 1521; prior: Code 1881 § 1532; 1854 p 291 § 145.]

11.48.130 Compromise of claims. The court shall have power to authorize the personal representative to compromise and compound any claim owing the estate. [1965 c 145 § 11.48.130. Prior: 1917 c 156 § 152; RRS § 1522; prior: Code 1881 § 1533; 1854 p 291 § 146.]

Rules of court: SPR 98.08W.

11.48.140 Recovery of decedent's fraudulent conveyances. When there shall be a deficiency of assets in the hands of a personal representative, and when the deceased shall in his lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors, the personal representative may, and it shall be his duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance. [1965 c 145 § 11.48.140. Prior: 1917 c 156 § 153; prior: Code 1881 § 1534; 1854 p 291 § 147.]

11.48.150 Several personal representatives considered as one. In an action against several personal representatives, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action. [1965 c 145 § 11.48.150. Prior: Code 1881 § 719; 1877 p 146 § 723; 1869 p 165 § 660; RRS § 968.]

11.48.160 Default judgment not evidence of assets—Exception. When a judgment is given against a personal representative for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets and that the notice was served upon him. [1965 c 145 § 11.48.160. Prior: Code 1881 § 720; 1877 p 146 § 724; 1869 p 166 § 661; RRS § 969.]

11.48.180 Liability of executor de son tort. No person is liable to an action as executor of his own wrong for having taken, received or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his interference with the estate of the deceased. [1965 c 145 § 11.48.180. Prior: Code 1881 § 722; 1877 p 146 § 726; 1869 p 166 § 663; RRS § 971.]

11.48.190 Executor of executor may not sue for estate of first testator. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof. [1965 c 145 § 11.48.190. Prior: Code 1881 § 723; 1877 p 147 § 727; 1869 p 166 § 664; RRS § 972.]

Administrator with will annexed on death of executor: RCW 11.28.060.

11.48.200 Arrest and attachment, when, authorized. In an action against a personal representative as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such personal representative, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally. [1965 c 145 § 11.48.200. Prior: Code 1881 § 724; 1877 p 147 § 729; 1869 p 167 § 666; RRS § 973.]

11.48.210 Compensation—Attorney's fee. If testator by will makes provision for the compensation of his personal representative, that shall be taken as his full compensation unless he files in the court a written instrument renouncing all claim for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he renounces all claim to the compensation provided in the will, shall be allowed such compensation for his services as the court shall deem just and reasonable. Additional compensation may be allowed for his services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final account; but at any time during administration a personal representative or his attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees. If the court finds that the personal representative has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [1965 c 145 §

11.48.210. Prior: 1917 c 156 § 158; RRS § 1528; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: SPR 98.12W.

Allowance of necessary expenses: RCW 11.48.050.

Will contests, costs: RCW 11.24.050.

Chapter 11.52
PROVISIONS FOR FAMILY SUPPORT

Sections

11.52.010 Award in lieu of homestead—Petition—Requirements—Amount—Time limit for filing petition. If it is made to appear to the satisfaction of the court that no homestead has been claimed in the manner provided by law, either prior or subsequent to the death of the person whose estate is being administered, then the court, after hearing and upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, and upon petition for that purpose, shall award and set off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of thirty thousand dollars at the time of death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased spouse, exclusive of the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's or materialmen's liens upon the property so set off, exclusive of debts arising out of a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance and exclusive of funeral expenses, expenses of last sickness and administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse; provided that the court shall have no jurisdiction to make such award unless the petition therefor is filed with the clerk within six years from the date of the death of the person whose estate is being administered. [1987 c 442 § 1116; 1984 c 260 § 17; 1974 ex.s. c 117 § 7; 1971 ex.s. c 12 § 2; 1967 c 168 § 12; 1965 c 145 § 11.52.010. Prior: 1963 c 185 § 1; 1955 c 205 § 10; 1951 c 264 § 2; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Severability—1971 ex.s. c 12: See note following RCW 6.13.030.

11.52.012 Award—Effect—Conditions under which award may be denied or reduced. Such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the estate shall be settled as other estates: PROVIDED, That no property of the estate shall be awarded or set off, as provided in RCW 11.52.010 through 11.52.024, as now or hereafter amended, to a surviving spouse who has feloniously killed the deceased spouse: PROVIDED FURTHER, That if it shall appear to the court, either (1) that there are children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse or minor children are entitled to receive property not subject to probate, including insurance, by reason of the death of the deceased spouse in the amount specified in RCW 11.52.010, or more, then the award in lieu of homestead and exemptions shall lie in the discretion of the court, and that whether there shall be an award and the amount thereof shall be determined by the court, which shall enter such decree as shall be just and equitable but not in excess of the award provided herein. [1985 c 194 § 1; 1984 c 260 § 18; 1977 ex.s. c 234 § 9; 1974 ex.s. c 117 § 8; 1965 c 145 § 11.52.012. Prior: 1951 c 264 § 3; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Inheritance rights of slayers: Chapter 11.84 RCW.

11.52.014 Award—Notice of hearing—Appointment of guardian ad litem for incompetents. Notice of such hearing shall be given in the manner prescribed in RCW 11.76.040. If there be any incompetent heir of the decedent, the court shall appoint a guardian ad litem for such incompetent heir, who shall appear at the hearing and represent the interest of such incompetent heir. [1965 c 145 § 11.52.014. Prior: 1951 c 264 § 4; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.52.016 Award—Finality—Is in lieu—Exempt from debts—Which law applies. The order of judgment of the court making the award or awards provided for in RCW

11.52.010 through 11.52.024 shall be conclusive and final, except on appellate review and except for fraud. The awards in RCW 11.52.010 through 11.52.024 provided shall be in lieu of all homestead provisions of the law and of exemptions. The said property, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of the deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the granting of the award. [1988 c 202 § 18; 1972 ex.s. c 80 § 1; 1965 c 145 § 11.52.016. Prior: 1951 c 264 § 5; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Rules of court: Method of appellate review superseded by RAP 2.2(a)(3).

Severability—1988 c 202: See note following RCW 2.24.050.

11.52.020 Homestead may be awarded to survivor—Decree—Notice—Exclusions—Appointment of guardian ad litem. In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead results in vesting the complete or partial title in the survivor, it shall be the duty of the court, upon petition of any person interested, and upon being satisfied that the value thereof does not exceed at the time of the death the amount specified in RCW 11.52.010, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased and exclusive of the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's, or materialmen's liens thereon, and exclusive of funeral expenses, expenses of last sickness and of administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse, to enter a decree, upon notice as provided in RCW 11.52.014 or upon longer notice if the court so orders, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor: PROVIDED, That if there be any incompetent heirs of the decedent, the court shall appoint a guardian ad litem for such incompetent heir who shall appear at the hearing and represent the interest of such incompetent heir. [1985 c 194 § 2; 1984 c 260 § 19; 1974 ex.s. c 117 § 9; 1971 ex.s. c 12 § 3; 1967 c 168 § 13; 1965 c 145 § 11.52.020. Prior: 1963 c 185 § 2; 1955 c 205 § 11; 1951 c 264 § 7; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Severability—1971 ex.s. c 12: See note following RCW 6.13.030.

Homesteads: Chapter 6.13 RCW.

11.52.022 Award in addition to homestead—Conditions under which such award may be denied or reduced. If the value of the homestead, exclusive of all such liens, be less than the amount specified in RCW 11.52.010, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration, have been paid or provided for, shall set off and award additional property, either separate or community, in lieu of such deficiency, so that the value of the homestead, exclusive of all such liens and expenses when added to the value of the other property awarded, exclusive of all such liens and expenses shall equal the amount specified in RCW 11.52.010: PROVIDED, That if it shall appear to the court, either (1) that there are children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) that such surviving spouse is, or any minor child entitled to an award under RCW 11.52.030 is, entitled to receive property not subject to probate, including insurance by reason of the death of the deceased spouse in the amount specified in RCW 11.52.010, or more, then the award of property in addition to the homestead, where the homestead is of less than the amount specified in RCW 11.52.010, shall lie in the discretion of the court, and that whether there shall be an award in addition to the homestead and the amount thereof shall be determined by the court, which shall enter such decree as shall be just and equitable, but not in excess of the award provided herein. [1985 c 194 § 3; 1984 c 260 § 20; 1977 ex.s. c 234 § 10; 1974 ex.s. c 117 § 10; 1971 ex.s. c 12 § 4; 1965 c 145 § 11.52.022. Prior: 1963 c 185 § 3; 1951 c 264 § 8; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Severability—1971 ex.s. c 12: See note following RCW 6.13.030.

11.52.024 Homestead and additional award—Finality—Is in lieu—Exempt from debts—Which law applies. Said decree shall particularly describe the said homestead and other property so awarded, and such homestead and other property so awarded shall not be subject to further administration, and such decree shall be conclusive and final, except on appeal, and except for fraud, and such awards shall be in lieu of all further homestead rights and of all exemptions. The property in addition to the homestead, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the granting of the award. [1972 ex.s. c 80 § 2; 1965 c 145 § 11.52.024. Prior: 1951 c 264 § 9; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 §

104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Rules of court: Method of appellate review superseded by RAP 2.2(a)(3).

11.52.030 Support of minor children. If there be no surviving spouse, the court shall award and set aside to the minor child or children, if any, and in such proportions as he considers proper, property of the estate as the court may consider necessary for the care and support of said minor or minors until they become of legal age, not exceeding in value the amount which the court is now or hereafter empowered to award to a surviving spouse. [1965 c 145 § 11.52.030. Prior: 1949 c 11 § 1; 1917 c 156 § 105; Rem. Supp. 1949 § 1475; prior: Code 1881 § 1463; 1854 p 279 § 75.]

11.52.040 Further allowance for family maintenance. In addition to the awards herein provided for, the court may make such further reasonable allowance of cash out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate, and any such allowance shall be paid by the personal representative in preference to all other charges, except funeral charges, expenses of last sickness and expenses of administration. [1965 c 145 § 11.52.040. Prior: 1917 c 156 § 106; RRS § 1476; prior: 1891 p 386 § 25, part; 1886 p 171 § 2, part; Code 1881 § 1461, part; 1854 p 279 § 73.]

11.52.050 Closure of estate—Discharge of personal representative. If it is made to appear to the court that the amount of funeral expenses, expenses of last illness, expenses of administration, general taxes and special assessments which were liens at the time of the death of the deceased spouse together with the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's or materialmen's liens upon the property to be set off under the provisions of RCW 11.52.010 through 11.52.024 together with the amount of the award to be made by the court under the provisions of RCW 11.52.010 through 11.52.040 shall be equal to the gross appraised value of the property of the estate, then the court at the time of making such award shall enter its judgment setting aside all of the property of the estate, subject to the aforementioned charges, to the petitioner, shall order the estate closed, discharge the executor or administrator and exonerate the executor's or administrator's bond. [1967 c 168 § 14. (i) 1965 c 145 § 11.52.050. (ii) 1965 c 126 § 1.]

Chapter 11.56
SALES, EXCHANGES, LEASES, MORTGAGES, AND BORROWING

Sections

Limitation of actions, recovery of realty sold by executor or administrator: RCW 4.16.070.

Registered land, probate may direct sale or mortgage of: RCW 65.12.590.

Request for special notice in proceedings in probate: RCW 11.28.240.

Sale of property to pay estate and transfer taxes: RCW 83.100.110.

11.56.005 Authority to exchange. Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be. [1965 c 145 § 11.56.005.]

11.56.010 Authority to sell, lease or mortgage. The court may order real or personal property sold, leased or mortgaged for the purposes hereinafter mentioned but no sale, lease or mortgage of any property of an estate shall be made except under an order of the court, unless otherwise provided by law. [1965 c 145 § 11.56.010. Prior: 1917 c 156 § 122; RRS § 1492; prior: 1895 c 157 § 1; 1883 p 29 § 1; Code 1881 § 1486; 1854 p 284 § 97.]

11.56.015 Priority. In determining what property of the estate shall be sold, mortgaged or leased for any purpose provided by RCW 11.56.020 and 11.56.030, there shall be no priority as between real and personal property, except as provided by will, if any. [1965 c 145 § 11.56.015.]

Appropriation to pay debts and expenses: RCW 11.56.150.

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Payment of claims where estate insufficient: RCW 11.76.150.

Sale of generally or specifically devised realty: RCW 11.56.050.

11.56.020 Sale, lease or mortgage of personal property. The court may at any time order any personal property, including for purposes of this section a vendor's interest in a contract for the sale of real estate, of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition therefor, and such sales may be either at public or private sale or by negotiation and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in RCW 11.28.240, unless the court expressly orders such notice.

Where personal property is sold prior to appraisement, the sale price shall be deemed the value for appraisal. Personal property may be mortgaged, pledged or leased for the same reasons and purposes, and in the same manner as is hereinafter provided for real property. [1965 c 145 § 11.56.020. Prior: (i) 1917 c 156 § 123; RRS § 1493; prior: 1891 c 155 §§ 29, 30; 1883 p 29 § 1; Code 1881 § 1488; 1854 p 284 § 99. (ii) 1955 c 205 § 12; RCW 11.56.025.]

Performance of decedent's contracts: Chapter 11.60 RCW.
Sale of decedent's contract interest in land: RCW 11.56.180.

11.56.030 Sale, lease or mortgage of real estate—Petition—Notice—Hearing. Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold, mortgaged or leased for the purpose of raising money to pay the debts and obligations of the estate, and the expenses of administration, estate taxes, or for the support of the family, to make distribution, or for such other purposes as the court may deem right and proper, the court may order the sale, lease or mortgage of such portion of the property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other things as will tend to assist the court in determining the necessity for the sale, lease or mortgage and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale, lease or mortgage need be given, except as provided in RCW 11.28.240 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining whether it should order any of the property of the estate sold, leased or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale, lease or mortgage, and the court may, if it see fit, order such sale, lease or mortgage without any petition having been previously presented. [1990 c 180 § 2; 1965 c 145 § 11.56.030. Prior: 1937 c 28 § 3; 1917 c 156 § 124; RRS § 1494; prior: Code 1881 § 1493; 1854 p 285 § 103.]

11.56.040 Order directing mortgage. If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the personal representative to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute and deliver his note or notes and secure the same by mortgage, and thereafter it shall be the duty of such personal representative to comply with such order. The personal representative shall not deliver any such note, mortgage or other evidence of indebtedness until he has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it. [1965 c 145 § 11.56.040. Prior: 1917 c 156 § 125; RRS § 1495; prior: Code 1881 § 1494; 1854 p 285 § 104.]

11.56.045 Order directing lease. If the court should determine that it is necessary or proper, for any of the said purposes to lease any or all of said property, it may make an order directing the personal representative to lease such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute the lease and thereafter it shall be the duty of the personal representative to comply with such order. The personal representative shall not execute such lease until he has first presented the same to the court and obtained its approval of the form. [1965 c 145 § 11.56.045.]

11.56.050 Order directing sale. If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this title, then it may make and cause to be entered an order directing the personal representative to sell so much of the real estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale, or by negotiation. The court shall order sold that part of the real estate which is generally devised, rather than any part which may have been specifically devised, but the court may, if it appears necessary, sell any or all of the real estate so devised. After the giving of such order it shall be the duty of the personal representative to sell such real estate in accordance with the order of the court and as in this title provided with reference to the public or private sales of real estate. [1965 c 145 § 11.56.050. Prior: 1917 c 156 § 126; RRS § 1496; prior: Code 1881 § 1494; 1854 p 285 § 104.]

Priority of sale as between realty and personalty: RCW 11.56.015.

11.56.060 Public sales—Notice. When real property is directed to be sold by public sale, notice of the time and place of such sale shall be published in a legal newspaper of the county in which the estate is being administered, once

each week for three successive weeks before such sale, in which notices the property ordered sold shall be described with proper certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. At the time and place named in such notices for the said sale, the personal representative shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public sale shall be made at the front door of the court house of the county in which the lands are, unless the court shall by order otherwise direct. [1965 c 145 § 11.56.060. Prior: 1917 c 156 § 127; RRS § 1497; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.070 Postponement, adjournment of sale—Notice. The personal representative, should he deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the personal representative at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the personal representative to cause a notice of such adjournment to be published in a legal newspaper in the county in which notice was published as provided in RCW 11.56.060, in addition to making such proclamation. [1965 c 145 § 11.56.070. Prior: 1917 c 156 § 128; RRS § 1498; prior: Code 1881 § 1505; 1854 p 287 § 115.]

11.56.080 Private sales of realty—Notice—Bids. When a sale of real property is ordered to be made at private sale, notice of the same must be published in a legal newspaper of the county in which the estate is being administered, once a week for at least two successive weeks before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but if made, must be made within twelve months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice or delivered to the personal representative personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order. [1965 c 145 § 11.56.080. Prior: 1917 c 156 § 129; RRS § 1499; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.090 Minimum price—Private sale—Sale by negotiation—Reappraisement. No sale of real estate at private sale or sale by negotiation shall be confirmed by the court unless the gross sum offered is at least ninety percent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers may be appointed, and they must make an appraisement thereof in the same manner as in the case of the original appraisement of the estate, and which appraisement may be made at any time before the sale or the confirmation thereof. [1965 c 145 § 11.56.090. Prior: 1917 c 156 § 130; RRS § 1500; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.100 Confirmation of sale—Approval—Resale. The personal representative making any sale of real estate, either at public or private sale, or sale by negotiation shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. In the case of a sale by negotiation the personal representative shall publish a notice in one issue of a legal newspaper of the county in which the estate is being administered; such notice shall include the legal description of the property sold, the selling price and the date after which the sale can be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published. At any time after the expiration of ten days from the publication of such notice, in the case of sale by negotiation, and at any time after the expiration of ten days from the filing of such return, in the case of public or private sale the court may approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale or sale by negotiation that it did not sell for at least ninety percent of the appraised value as in RCW 11.56.090 provided, and that a sum exceeding said bid by at least ten percent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made. [1965 c 145 § 11.56.100. Prior: 1917 c 156 § 131; RRS § 1501; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.110 Offer of increased bid—Duty of court. If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his bid in the form of cash, money order, cashier's check or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his bid, the bidder whose bid was accepted shall be informed of such

increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation. Instead of such a direction, the court, upon application of the personal representative, may direct the reception of sealed bids. Thereupon the personal representative shall mail notice by registered or certified mail to all those who have made bids on such property, informing them that sealed bids will be received by the clerk of the court within ten days. At the expiration of such period the personal representative, in the presence of the clerk of the court, shall open such bids as shall have been submitted to the clerk within the time stated in the notice (whether by previous bidders or not) and shall file a recommendation of the acceptance of the bid which he deems best in view of the requirements of the particular estate. The court may thereupon direct a sale to the bidder whose bid is deemed best by the court and a sale made pursuant to such direction shall need no confirmation: PROVIDED, HOWEVER, That the court shall consider the net realization to the estate in determining the best bid. [1967 ex.s. c 106 § 2; 1967 c 168 § 18; 1965 c 145 § 11.56.110. Prior: 1955 c 154 § 1; 1917 c 156 § 132; RRS § 1502.]

Effective date—1967 ex.s. c 106: "The provisions of this act shall take effect on July 1, 1967." [1967 ex.s. c 106 § 5.]

Effective date—1967 c 168: See note following RCW 11.02.070.

11.56.115 Effect of confirmation. No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with. [1965 c 145 § 11.56.115. Prior: 1917 c 156 § 134; RCW 11.56.130; RRS § 1504; prior: Code 1881 § 1510; 1854 p 287 § 120.]

Real estate sold by executor, etc., limitation of action: RCW 4.16.070.

11.56.120 Conveyance after confirmation of sale. Upon the confirmation of any such sale the court shall direct the personal representative to make, execute and deliver instruments conveying the title to the person to whom such property may be sold, and such instruments of conveyance shall be deemed to convey all the estate, rights and interests of the testator or intestate at the death of the deceased and any interest acquired by the estate. [1965 c 145 § 11.56.120. Prior: 1917 c 156 § 133; RRS § 1503; prior: Code 1881 § 1510; 1854 p 287 § 120.]

11.56.140 Sale, lease or mortgage of realty to pay legacy. When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the personal representative, with the will annexed, may obtain an order to sell, mortgage or lease his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale, mortgage or lease for the payments of the debts. [1965 c 145 § 11.56.140. Prior: 1917 c 156 § 135; RRS § 1505; prior: 1895 c 157 § 10; Code 1881 § 1513; 1854 p 288 § 123.]

11.56.150 Appropriation to pay debts and expenses. If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this chapter. [1965 c 145 § 11.56.150. Prior: 1917 c 156 § 136; RRS § 1506; prior: 1891 c 155 § 32; Code 1881 § 1515; 1854 p 288 § 126.]

***Rules of court:** SPR 98.12W.*

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: RCW 11.56.015.

11.56.160 Liability of devisees and legatees for debts and expenses. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and allowances to the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary to carry into effect the intention of the testator. [1965 c 145 § 11.56.160. Prior: 1917 c 156 § 137; RRS § 1507; prior: Code 1881 § 1517; 1854 p 288 § 127.]

11.56.170 Contribution among devisees and legatees. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the payments of the debts or expenses; and the court, when distribution is made, shall by decree for that purpose, settle the amount of the several liabilities and decree how much each person shall contribute. [1965 c 145 § 11.56.170. Prior: 1917 c 156 § 138; RRS § 1508; prior: Code 1881 § 1518; 1854 p 289 § 128.]

11.56.180 Sale of decedent's contract interest in land. If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract may be sold on the application of his personal representative in the same manner as if he died seized of such lands; and the same proceedings

may be had for that purpose as are prescribed in this title in respect to lands of which he died seized, except as hereinafter provided. [1965 c 145 § 11.56.180. Prior: 1917 c 156 § 139; RRS § 1509; prior: Code 1881 § 1519; 1854 p 289 § 129.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

11.56.210 Assignment of decedent's contract. Upon the confirmation of such sale, the personal representative shall execute to the purchaser an assignment of the contract and deed, which shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living. [1965 c 145 § 11.56.210. Prior: 1917 c 156 § 142; RRS § 1512; prior: Code 1881 § 1522; 1854 p 289 § 132.]

11.56.220 Redemption of decedent's mortgaged estate. If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court, upon the application of any person interested, may order the personal representative to redeem the estate out of the assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors. [1965 c 145 § 11.56.220. Prior: 1917 c 156 § 143; RRS § 1513; prior: Code 1881 § 1523; 1854 p 289 § 133.]

11.56.230 Sale or mortgage to effect redemption. If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court. [1965 c 145 § 11.56.230. Prior: 1917 c 156 § 144; RRS § 1514; prior: 1895 c 157 § 11; 1888 p 185 § 1.]

11.56.240 Sale of mortgaged property if redemption inexpedient. If such redemption be not deemed expedient, the court shall order such property to be sold at public or private sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided for in this title, and shall be sold subject to such mortgage, and the personal representative shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration. [1965 c 145 § 11.56.240. Prior: 1917 c 156 § 145; RRS § 1515; prior: Code 1881 § 1524; 1873 p 296 § 211; 1854 p 290 § 134.]

11.56.250 Sales directed by will. When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court. [1965 c 145 § 11.56.250. Prior: 1917 c 156 § 146; RRS § 1516; prior: Code 1881 § 1527.]

11.56.265 Broker's fee and closing expenses—Sale, mortgage or lease. In connection with the sale, mortgage or lease of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith. [1965 c 145 § 11.56.265.]

Allowance of necessary expenses to personal representative: RCW 11.48.050.

11.56.280 Borrowing on general credit of estate—Petition—Notice—Hearing. Whenever it shall appear to the satisfaction of the court that money is needed to pay debts of the estate, expenses of administration, or estate taxes, the court may by order authorize the personal representative to borrow such money, on the general credit of the estate, as appears to the court necessary for the purposes aforesaid. The time for repayment, rate of interest and form of note authorized shall be as specified by the court in its order. The money borrowed pursuant thereto shall be an obligation of the estate repayable with the same priority as unsecured claims filed against the estate. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and tax obligations and such other things as will tend to assist the court in determining the necessity for the borrowing and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition need be given, except to persons who have requested notice under the provisions of RCW 11.28.240; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the foregoing purpose. The absence of any allegation in the petition shall not deprive the court of jurisdiction to authorize such borrowing. [1990 c 180 § 3; 1965 c 145 § 11.56.280.]

Order of payment of debts: RCW 11.76.110.

Powers of executor under nonintervention will: RCW 11.68.040.

Chapter 11.60
PERFORMANCE OF DECEDENT'S CONTRACTS

Sections

Evidence, transaction with person since deceased: RCW 5.60.030.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

Sale or assignment of decedent's contract interest in land: RCW 11.56.180, 11.56.210.

11.60.010 Order for performance on application of personal representative. If any person, who is bound by contract, in writing, shall die before performing said contract, the superior court of the county in which the estate is being administered, may upon application of the personal representative, without notice, make an order authorizing and directing the personal representative to perform such contract. [1965 c 145 § 11.60.010. Prior: 1917 c 156 § 188; RRS § 1558; prior: 1891 p 390 § 40; Code 1881 § 623; 1877 p 130 § 626; 1854 p 292 § 150.]

Guardianship, performance of contracts: RCW 11.92.130.

11.60.020 Petition, notice, and hearing when personal representative fails to make application. If the personal representative fails to make such application, then any person claiming to be entitled to such performance under such contract, may present a petition setting forth the facts upon which such claim is predicated. Notice of hearing shall be in accordance with the provisions of *RCW 11.16.081. [1965 c 145 § 11.60.020. Prior: 1917 c 156 § 189; RRS § 1559; prior: 1891 c 155 § 41; Code 1881 § 694; 1877 p 130 § 627; 1854 p 292 § 151.]

***Reviser's note:** RCW 11.16.081 was repealed by 1969 c 70 § 5.

Actions for recovery of property and on contract: RCW 11.48.090.

11.60.030 Hearing. At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of service of the notice as provided in *RCW 11.16.081, the court shall proceed to a hearing and determine the matter. [1965 c 145 § 11.60.030. Prior: 1917 c 156 § 190; RRS § 1560; prior: 1891 c 155 § 42; Code 1881 § 625; 1877 p 130 § 628; 1854 p 293 § 152.]

***Reviser's note:** RCW 11.16.081 was repealed by 1969 c 70 § 5.

11.60.040 Conveyance of real property—Effect. In the case of real property, a conveyance executed under the provisions of this title shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract. [1965 c 145 § 11.60.040. Prior: 1917 c 156 § 191; RRS § 1561; prior: Code 1881 § 626; 1877 p 130 § 629; 1854 p 293 § 153.]

11.60.060 Procedure on death of person entitled to performance. If the person entitled to performance shall die before the commencement of the proceedings according to the provisions of this title or before the completion of performance, any person who would have been entitled to the performance under him, as heir, devisee, or otherwise, in case the performance had been made according to the terms of the contract, or the personal representative of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the performance shall inure to the persons who would have been entitled to it, or to the personal representative for their benefit. [1965 c 145 § 11.60.060. Prior: 1917 c 156 § 193; RRS § 1563; prior: 1891 c 155 § 47; Code 1881 § 532; 1877 p 132 § 635; 1854 p 294 § 159.]

Chapter 11.62
ESTATES UNDER $10,000—DISPOSITION OF DEBTS, PERSONAL PROPERTY TAXES, ETC., BY AFFIDAVIT

Sections

Reviser's note: Inheritance and gift taxes were repealed by 1981 2nd ex.s. c 7 § 83.100.160. For provisions relating to estate and transfer taxes, see chapter 83.100 RCW.

11.62.005 Definitions. As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2)(a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse of the decedent to the extent that the surviving spouse is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse and the decedent; and/or

(iii) This state, in the case of escheat property.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization.

(4) "Organization" shall include a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. [1988 c 64 § 24; 1977 ex.s. c 234 § 29.]

Captions—Severablity—1988 c 64: See RCW 83.100.904 and 83.100.905.

Application, effective date—Severabillty—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Securities. (1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed the amount specified in *RCW 6.13.030;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section. [1988 c 64 § 25; 1988 c 29 § 2; 1987 c 157 § 1; 1977 ex.s. c 234 § 11; 1974 ex.s. c 117 § 4.]

Reviser's note: (1) This section was amended by 1988 c 29 § 2 and by 1988 c 64 § 25, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*(2) 1988 c 29 § 2 cited RCW 6.12.050 which was recodified as RCW 6.13.030 pursuant to 1987 c 442.

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability. The person paying, delivering, transferring, or issuing personal property pursuant to RCW 11.62.010 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance, such person had actual knowledge of the falsity of any statement which is required by RCW 11.62.010(2) as now or hereafter amended to be contained in the successor's affidavit. Such person is not required to see to the application of the personal property, or to inquire into the truth of any matter specified in RCW 11.62.010 (1) or (2), or into the payment of any estate tax liability.

An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to RCW 11.62.010(2) as now or hereafter amended until such time as said knowledge shall have been brought to the personal attention of the individual making the transfer, delivery, payment, or issuance of the personal property claimed under RCW 11.62.010 as now or hereafter amended.

If any person to whom an affidavit and proof of death is delivered refuses to pay, deliver, or transfer any personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. If more than one affidavit is delivered with reference to the same personal property, the person to whom an affidavit is delivered may pay, deliver, transfer, or issue any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternately implead such property into court for payment over to the person entitled thereto. Any person to whom payment, delivery, transfer, or issuance of personal property is made pursuant to RCW 11.62.010 as now or hereafter amended is answerable and accountable therefor to

any personal representative of the estate of the decedent or to any other person having a superior right thereto. [1990 c 180 § 4; 1977 ex.s. c 234 § 12; 1974 ex.s. c 117 § 5.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.62.030 Payment to surviving spouse of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative. On the death of any member of any credit union organized under chapter 31.12 RCW or federal law, such credit union may pay to the surviving spouse the moneys of such member on deposit to the credit of said deceased member, including moneys deposited as shares in said credit union, in cases where the amount of deposit does not exceed the sum of one thousand dollars, upon receipt of an affidavit from the surviving spouse to the effect that the member died and no executor or administrator has been appointed for the member's estate, and the member had on deposit in said credit union money not exceeding the sum of one thousand dollars. The payment of such deposit made in good faith to the spouse making the affidavit shall be a full acquittance and release of the credit union for the amount of the deposit so paid.

No probate proceeding shall be necessary to establish the right of said surviving spouse to withdraw said deposits upon the filing of said affidavit: PROVIDED, That whenever a personal representative is appointed in an estate where a withdrawal of deposits has been had in compliance with this section, the spouse so withdrawing said deposits shall account for the same to the personal representative. The credit union may also pay out the moneys on deposit to the credit of the deceased upon presentation of an affidavit as provided in RCW 11.62.010, as now or hereafter amended. [1980 c 41 § 10.]

Severability—1980 c 41: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 41 § 13.]

Chapter 11.64
PARTNERSHIP PROPERTY

Sections

Dissolution and winding up of partnership: RCW 25.04.290 through 25.04.430.

Property rights of a partner: RCW 25.04.240 through 25.04.280.

Relations of partners to one another: RCW 25.04.180 through 25.04.230.

Rights of estate of deceased partner when business is continued: RCW 25.04.420.

11.64.002 Inventory—Appraisement. Within three months after receiving written request from the personal representative the surviving partner or partners of the partnership shall furnish the personal representative with a verified inventory of the assets of the partnership. The inventory shall state the value of the assets as shown by the books of the partnership and list the liabilities of the partnership. At the request of the personal representative, the surviving partner or partners shall permit the assets of the partnership to be appraised, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. [1977 ex.s. c 234 § 13; 1965 c 145 § 11.64.002. Prior: 1951 c 197 § 1; prior: (i) 1917 c 156 § 88; RRS § 1458. (ii) 1917 c 156 § 91; RRS § 1461.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Inventory of estate to identify decedent's share in partnership: RCW 11.44.015(6).

Right to wind up partnership: RCW 25.04.370.

11.64.008 Surviving partner may continue in possession. The surviving partner or partners may continue in possession of the partnership estate, pay its debts, and settle its business, and shall account to the personal representative of the decedent and shall pay over such balances as may, from time to time, be payable to him. [1977 ex.s. c 234 § 14; 1965 c 145 § 11.64.008. Prior: 1951 c 197 § 2.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.016 Security may be required. If the surviving partner or partners commit waste, or if it appears to the court that it is for the best interest of the estate of the decedent, such court may, after a hearing, order the surviving partner or partners to give security for the faithful settlement of the partnership affairs and the payment to the personal representative of any amount due the estate. [1977 ex.s. c 234 § 15; 1965 c 145 § 11.64.016. Prior: 1951 c 197 § 3.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.022 Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt of court—Receiver. If the surviving partner or partners fail or refuse to furnish an inventory or list of liabilities, to permit an appraisal, or to account to the personal representative, or to furnish a bond when required pursuant to RCW 11.64.016, the court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not furnished an inventory list of liabilities, or permitted an appraisal or why they should not account to the personal representative or file a bond. The citation shall be served not less than ten days before the return day designated therein, or such shorter period as the court upon a showing of good cause deems appropriate. If the surviving partner or partners neglect or refuse to file an inventory or list of liabilities, or to permit an appraisal, or fail to account to the court or to file a bond, after they have been directed to do so, they may be punished for a contempt of court as provided in chapter 7.21 RCW. Where the surviving partner or partners fail to file a bond after being ordered to do so by

the court, the court may also appoint a receiver of the partnership estate with like powers and duties of receivers in equity, and order the costs and expenses of the proceedings to be paid out of the partnership estate or out of the estate of the decedent, or by the surviving partner or partners personally, or partly by each of the parties. [1989 c 373 § 15; 1977 ex.s. c 234 § 16; 1965 c 145 § 11.64.022. Prior: 1951 c 197 § 4.]

Severability—1989 c 373: See RCW 7.21.900.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.030 Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities. The surviving partner or the surviving partners jointly, shall have the right at any time to petition the court to purchase the interests of a deceased partner in the partnership. Upon a hearing pursuant to such petition the court shall, in such manner as it sees fit, determine and by order fix the value of the interest of the deceased partner over and above all partnership debts and obligations, the price, terms, and conditions of such sale and the period of time during which the surviving partner or partners shall have the prior right to purchase the interest of the deceased partner. If any such surviving partner be also the personal representative of the estate of the deceased partner, such fact shall not affect his right to purchase, or to join with the other surviving partners to purchase such interest in the manner hereinbefore provided.

The court shall make such orders in connection with such sale as it deems proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations. [1977 ex.s. c 234 § 17; 1965 c 145 § 11.64.030. Prior: 1951 c 197 § 5; prior: 1917 c 156 § 89; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1459.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.040 Surviving partner may operate under agreement with estate—Termination. The court may, in instances where it is deemed advisable, authorize and direct the personal representative of the estate of a deceased partner to enter into an agreement with the surviving partner or partners under which the surviving partner or partners may continue to operate any going business of the former partnership until the further order of the court. The court may, in its discretion, revoke such authority and direction and thereby terminate such agreement at any time by further order, entered upon the application of the personal representative or the surviving partner or partners or any interested person or on its own motion. [1965 c 145 § 11.64.040. Prior: 1951 c 197 § 6; prior: 1917 c 156 § 90; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1460.]

Chapter 11.66
SOCIAL SECURITY BENEFITS

Sections

11.66.010 Social security benefits—Payment to survivors or department of social and health services—Effect. (1) If not less than thirty days after the death of an individual entitled at the time of death to a monthly benefit or benefits under Title II of the Social Security Act, all or part of the amount of such benefit or benefits, not in excess of one thousand dollars, is paid by the United States to (a) the surviving spouse, (b) one or more of the deceased's children, or descendants of his deceased children, (c) the secretary of social and health services if the decedent was a resident of a state institution at the date of death and liable for the cost of his care in an amount at least as large as the amount of such benefits, (d) the deceased's father or mother, or (e) the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, such payment shall be deemed to be a payment to the legal representative of the decedent and shall constitute a full discharge and release from any further claim for such payment to the same extent as if such payment had been made to an executor or administrator of the decedent's estate.

(2) The provisions of subsection (1) hereof shall apply only if an affidavit has been made and filed with the United States Department of Health, Education, and Welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made and such affidavit shows (a) the date of death of the deceased, (b) the relationship of the affiant to the deceased, (c) that no executor or administrator for the deceased has qualified or been appointed, nor to the affiant's knowledge is administration of the deceased's estate contemplated, and (d) that, to the affiant's knowledge, there exists at the time of the filing of such affidavit, no relative of a closer degree of kindred to the deceased than the affiant: PROVIDED, That the affidavit filed by the secretary of social and health services shall meet the requirements of parts (a) and (c) of this subsection and, in addition, show that the decedent left no known surviving spouse or children and died while a resident of a state institution at the date of death and liable for the cost of his care in an amount at least as large as the amount of such benefits. [1979 c 141 § 12; 1967 c 175 § 2.]

Effective date—1967 c 175: "This 1967 amendatory act shall take effect and be in force on and after the first day of July, 1967, in conformity with the terms and provisions of section 11.99.010, chapter 145, Laws of 1965 and RCW 11.99.010." [1967 c 175 § 3.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Chapter 11.68
SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

Sections

11.68.010 Settlement without court intervention—Solvency—Order of solvency—Notice. Subject to the provisions of this chapter, if the estate of a decedent, who died either testate or intestate, is solvent, and if the personal representative is other than a creditor of the decedent not designated as personal representative in the decedent's will, such estate shall be managed and settled without the intervention of the court; the fact of solvency shall be established by the entry of an order of solvency. An order of solvency may be entered at the time of the appointment of the personal representative or at any time thereafter where it appears to the court by the petition of the personal representative, or the inventory filed, and/or other proof submitted, that the estate of the decedent is solvent, and that notice of the application for an order of solvency has been given to those persons entitled thereto when required by RCW 11.68.040 as now or hereafter amended. [1977 ex.s. c 234 § 18; 1974 ex.s. c 117 § 13; 1969 c 19 § 1; 1965 c 145 § 11.68.010. Prior: 1955 c 205 § 5; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Distribution of estates to minors: RCW 11.76.095.

Duty of personal representative to notify department of revenue of administration: RCW 82.32.240.

Inventory: RCW 11.44.015.

Notice
of appointment as personal representative: RCW 11.28.237.
of hearing on final report and petition for distribution: RCW 11.76.040.
to creditors: RCW 11.40.010.

Request for special notice in proceedings in probate: RCW 11.28.240.

11.68.020 Presumption of nonintervention powers where personal representative named in will. Unless court supervision of an estate shall be specifically required under the terms and provisions of a will, a decedent shall be deemed to have intended any and all personal representatives named in his will to have the power to administer his estate without the intervention of court, and any personal representative or personal representatives named in the decedent's will shall acquire nonintervention powers without prior notice, upon meeting the requirements of RCW 11.68.010 as now or hereafter amended. [1974 ex.s. c 117 § 14; 1965 c 145 § 11.68.020. Prior: 1955 c 205 § 6; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.030 Nonintervention powers—Order of solvency—Bond. Subject to giving prior notice when required under RCW 11.68.040 as now or hereafter amended and the entry of an order of solvency, the personal representative, other than a decedent's creditor, of an estate of a decedent who died intestate or the personal representative, other than a decedent's creditor, with the will annexed of the estate of a decedent who died testate shall have the power to administer the estate without further intervention of court after the entry of an order of solvency and furnishing bond when required. [1977 ex.s. c 234 § 19; 1974 ex.s. c 117 § 15; 1965 c 145 § 11.68.030. Prior: 1955 c 205 § 7; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Revocation of letters—Causes: RCW 11.28.250.

11.68.040 Application for nonintervention powers—Intestacy or personal representative not named—Notice—Requirements—Hearing on petition. (1) If the decedent shall have died intestate, or the petitioning personal representative is not named in the will as such, and in either case the petitioner wishes to acquire nonintervention powers, the personal representative shall, after filing the petition for order of solvency, give notice of his intention to apply to the court for nonintervention powers to all heirs, devisees, legatees of the decedent, and all persons who have requested notice under RCW 11.28.240, who have not, in writing, either waived notice of the hearing or consented to the entry of an order of solvency; said notice shall be given at least ten days prior to the date fixed by the personal representative for the hearing on his petition for an order of solvency: PROVIDED, That no prior notice of said hearing shall be required when the personal representative is:

(a) The surviving spouse of the decedent and the decedent left no issue of a prior marriage; or

(b) A bank or trust company authorized to do trust business in the state of Washington.

(2) The notice required by this section shall be sent by regular mail and proof of mailing of said notice shall be by affidavit filed in the cause. Said notice shall contain the name of the decedent's estate, the probate cause number, the

name and address of the personal representative, and shall state in substance as follows:

(a) The personal representative has petitioned the superior court of . . . . . county, state of Washington, for the entry of an order of solvency and a hearing on said petition will be held on . . . . . ., the . . . . day of . . . . . ., 19. . ., at . . . . o'clock, ...M.;

(b) The petition for order of solvency has been filed with said court;

(c) Upon the entry of an order of solvency by the court, the personal representative will be entitled to administer and close the decedent's estate without further court intervention or supervision;

(d) Any heir, legatee, devisee, or other person entitled to notice shall have the right to appear at the time of the hearing on the petition for an order of solvency to object to the granting of nonintervention powers to the personal representative.

(3) If no notice is required, or all heirs, legatees, devisees, and other persons entitled to notice have either waived notice of said hearing or consented to the entry of an order of solvency as provided in this section, the court may hear the petition for an order of solvency at any time. [1977 ex.s. c 234 § 20; 1974 ex.s. c 117 § 16; 1965 c 145 § 11.68.040. Prior: 1955 c 205 § 9; prior: 1917 c 156 § 93; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1463.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.050 Objections to granting of nonintervention powers—Restrictions on powers—No objections. If at the time set for the hearing upon the petition for the entry of an order of solvency, any person entitled to notice under the provisions of RCW 11.68.040 as now or hereafter amended, shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider said objections, if any, and the entry of an order of solvency shall be discretionary with the court upon being satisfied by proof as required in RCW 11.68.010 as now or hereafter amended. If an order of solvency is entered, the court may restrict the powers of the personal representative in such manner as the court determines. If no objection is made at the time of the hearing by any person entitled to notice thereof, the court shall enter an order of solvency upon being satisfied by proof as required in RCW 11.68.010 as now or hereafter amended. [1977 ex.s. c 234 § 21; 1974 ex.s. c 117 § 17.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.060 Death, resignation, or disablement of personal representative—Successor to administer nonintervention powers. If, after the entry of an order of solvency, any personal representative of the estate of the decedent shall die, resign, or otherwise become disabled from any cause from acting as the nonintervention personal representative, the successor personal representative, other than a creditor of a decedent not designated as a personal representative in the decedent's will, shall administer the estate of the decedent without the intervention of court after notice and hearing as required by RCW 11.68.040 and 11.68.050 as now or hereafter amended, unless at the time of said hearing objections to the granting of nonintervention powers to such successor personal representative shall be made by an heir, legatee, devisee, or other person entitled to notice pursuant to RCW 11.28.240 as now existing or hereafter amended, and unless the court, after hearing said objections shall refuse to grant nonintervention powers to such successor personal representative. If no heir, legatee, devisee, or other person entitled to notice shall appear at the time of the hearing to object to the granting of nonintervention powers to such successor personal representative, the court shall enter an order granting nonintervention powers to the successor personal representative. [1977 ex.s. c 234 § 22; 1974 ex.s. c 117 § 18.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.070 Procedure when personal representative recreant to trust or subject to removal. If any personal representative who has been granted nonintervention powers fails to execute his trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, the court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended; then, in the discretion of the court the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed. In the event the court shall restrict the powers of the personal representative in any manner, it shall endorse the words "Powers restricted" upon the original order of solvency together with the date of said endorsement, and in all such cases the cost of the citation, hearing, and reasonable attorney's fees may be awarded as the court determines. [1977 ex.s. c 234 § 23; 1974 ex.s. c 117 § 19.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.080 Order of solvency—Vacation or restriction. After such notice as the court may require, the order of solvency shall be vacated or restricted upon the petition of any personal representative, heir, legatee, devisee, or creditor, if supported by proof satisfactory to the court that said estate has become insolvent.

If, after hearing, the court shall vacate or restrict the prior order of solvency, the court shall endorse the term "Vacated" or "Powers restricted" upon the original order of

solvency together with the date of said endorsement. [1977 ex.s. c 234 § 24; 1974 ex.s. c 117 § 20.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.090 Powers of personal representative under nonintervention will—Scope—Presumption of necessity. Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise do anything a trustee may do under RCW 11.98.070 and chapters 11.100 and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Any party to any such transaction and his or her successors in interest shall be entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate. Except as otherwise specifically provided in this chapter or by order of court, chapter 11.76 RCW shall not apply to the administration of an estate by a personal representative acting under nonintervention powers. [1988 c 29 § 3; 1985 c 30 § 7. Prior: 1984 c 149 § 10; 1974 ex.s. c 117 § 21.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees. (1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall have the authority and it shall be its duty, to make and cause to be entered a decree which either:

(a) Finds and adjudges that all approved claims of the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under his will, and distributes the property of the decedent to the persons entitled thereto; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

(2) Either decree provided for in this section shall be made after notice given as provided for in the settlement of estates by a personal representative who has not acquired nonintervention powers. The petition for either decree provided for in this section shall state the fees paid or proposed to be paid to the personal representative, his attorneys, accountants, and appraisers, and any heir, devisee, or legatee whose interest in the assets of a decedent's estate would be reduced by the payment of said fees shall receive a copy of said petition with the notice of hearing thereon; at the request of the personal representative or any said heir, devisee, or legatee, the court shall, at the time of the hearing on either petition, determine the reasonableness of said fees. The court shall take into consideration all criteria forming the basis for the determination of the amount of such fees as contained in the code of professional responsibility; in determining the reasonableness of the fees charged by any personal representative, accountants, and appraisers the court shall take into consideration the criteria forming the basis for the determination of attorney's fees, to the extent applicable, and any other factors which the court determines to be relevant in the determination of the amount of fees to be paid to such personal representative. [1977 ex.s. c 234 § 25; 1974 ex.s. c 117 § 22.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.110 Declaration of completion of probate—Contents. If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration to that effect, which declaration shall state as follows:

(1) The date of the decedent's death, and the decedent's residence at the time of death, whether or not the decedent died testate or intestate, and if testate, the date of the decedent's last will and testament and the date of the order admitting the will to probate;

(2) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of estate taxes due as the result of the decedent's death has been determined, settled, and paid;

(3) The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed;

(4) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each heir; and

(5) The amount of fees paid or to be paid to each of the following: (a) Personal representative or representatives, (b) lawyer or lawyers, (c) appraiser or appraisers, and (d) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and the representative's powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree

of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

Within five days of the date of the filing of the declaration of completion, the personal representative or the representative's lawyer shall mail a copy of the declaration of completion to each heir, legatee, or devisee of the decedent (who has not waived notice of said filing, in writing, filed in the cause) together with a notice which shall be substantially as follows:

CAPTION OF CASE	NOTICE OF FILING OF DECLARATION OF COMPLETION OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . . day of . . . . . ., 19. . .; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, within thirty days after the date of the filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

Dated this . . . . day of . . . . . ., 19. . .

. . . . . .
Personal Representative

If all heirs, devisees, and legatees of the decedent waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the personal representative shall be automatically discharged upon the discharge of the personal representative. [1990 c 180 § 5; 1985 c 30 § 8. Prior: 1984 c 149 § 11; 1977 ex.s. c 234 § 26; 1974 ex.s. c 117 § 23.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Effective date, application—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.120 Nonintervention powers not deemed waived by obtaining order or decree. A personal representative who has acquired nonintervention powers in accordance with this chapter shall not be deemed to have waived his nonintervention powers by obtaining any order or decree during the course of his administration of the estate. [1974 ex.s. c 117 § 24.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Chapter 11.72
DISTRIBUTION BEFORE SETTLEMENT

Sections

11.72.002 Delivery of specific property to distributee before final decree. Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return. [1965 c 145 § 11.72.002.]

11.72.006 Decree of partial distribution—Distribution of part of estate. After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons, as the court may direct. Such distribution shall be as conclusive as a decree of final distribution with respect to the estate distributed except to the extent that other distributees and claimants are deprived of the fair share or amount which they would otherwise receive on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the distribution. In the event of a request for a partial distribution asked by a person other than the personal representative of the estate, the costs of such proceedings and a reasonable allowance for attorneys fees shall be assessed against the applicant or applicants for the benefit of the estate. [1965 c 145 § 11.72.006. Formerly RCW 11.72.010 through 11.72.070.]

Chapter 11.76
SETTLEMENT OF ESTATES

Sections

Destruction of receipts for expenses under probate proceedings: RCW 36.23.065.

Estate and transfer taxes: Chapter 83.100 RCW.

11.76.010 Report of personal representative—Contents—Interim reports. Not less frequently than annually from the date of qualification, unless a final report has theretofore been rendered, the personal representative shall make, verify by his oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell, mortgage, lease or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange; such report shall likewise state the amount of property, real and personal, which has come into his hands, and give a detailed statement of all sums collected by him, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him done or which should be done. Such personal representative may at any time, however, make, verify, and file any reports which in his judgment would be proper or which the court may order to be made. [1965 c 145 § 11.76.010. Prior: 1917 c 156 § 159; RRS § 1529; prior: Code 1881 § 1544; 1854 p 296 § 167.]

11.76.020 Notice of hearing—Settlement of report. It shall not be necessary for the personal representative to give any notice of the hearing of any report prior to the final report, except as in RCW 11.28.240 provided, but the court may require notice of the hearing of any such report. [1965 c 145 § 11.76.020. Prior: 1917 c 156 § 160; RRS § 1530.]

11.76.030 Final report and petition for distribution—Contents. When the estate shall be ready to be closed, such personal representative shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his previous report, and debts paid, and generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative. If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective. [1965 c 145 § 11.76.030. Prior: 1917 c 156 § 161; RRS § 1531; prior: 1891 c 155 § 34; Code 1881 § 1556; 1873 p 305 § 251; 1854 p 297 § 178.]

Closure and discharge where obligations and awards equal value of estate: RCW 11.52.050.

Discharge of personal representative for cause: RCW 11.28.160, 11.28.250.

11.76.040 Time and place of hearing—Notice. When such final report and petition for distribution, or either, has been filed, the court, or the clerk of the court, shall fix a day for hearing it which must be at least twenty days subsequent to the day of the publication as hereinafter provided. Notice of the time and place fixed for the hearing shall be given by the personal representative by publishing a notice thereof in a legal newspaper published in the county for one publication at least twenty days preceding the time fixed for the hearing. It shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court and that the court is asked to settle such report, distribute the property to the heirs or persons entitled thereto, and discharge the personal representative, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the personal representative or the clerk of the court.

Whenever a final report and petition for distribution, or either, shall have been filed in the estate of a decedent and a day fixed for the hearing of the same, the personal representative of such estate shall, not less than twenty days before the hearing, cause to be mailed a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and distributee whose name and address are known to him, and proof of such mailing shall be made by affidavit and filed at or before the hearing. [1969 c 70 § 3; 1965 c 145 § 11.76.040. Prior: 1955 c 205 § 13; 1919 c 31 § 1; 1917 c 156 § 162; RRS § 1532. FORMER PART OF

SECTION: re Notice of appointment as personal representative, now codified as RCW 11.28.237.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.76.050 Hearing on final report—Decree of distribution. Upon the date fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report, and finds the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to the same. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisement, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged in the manner provided by law for the sale or mortgaging of property by personal representatives and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sale thereof made where partition is impracticable except upon a hearing before the court and the court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale; and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

The provisions of this section shall be concurrent with and not in derogation of other statutes as to partition of property or sale. [1965 c 145 § 11.76.050. Prior: 1921 c 93 § 1; 1917 c 156 § 163; RRS § 1533; prior: Code 1881 § 1557; 1854 p 297 § 179.]

Partition: Chapter 7.52 RCW.

11.76.060 Continuance to cite in sureties on bond when account incorrect. If, at any hearing upon any report of any personal representative, it shall appear to the court before which said proceeding is pending that said personal representative has not fully accounted to the beneficiaries of his trust and that said report should not be approved as rendered, the court may continue said hearing to a day certain and may cite the surety upon the bond of said personal representative to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said personal representative and the surety upon his bond. Said citation shall be personally served upon said surety in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the report of said personal representative shall not be approved and the court shall find that said personal representative is indebted to the beneficiary of his trust in any amount, the court may thereupon enter final judgment against said personal representative and the surety upon his bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [1965 c 145 § 11.76.060. Prior: 1937 c 28 § 1; RRS § 1590-1.]

11.76.070 Attorney's fees to contestant of erroneous account or report. If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney's fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions. [1965 c 145 § 11.76.070. Prior: 1937 c 28 § 2; RRS § 1590-2.]

Rules of court: SPR 98.12W.

11.76.080 Representation of incompetent or disabled person by guardian ad litem or limited guardian—

Exception. If there be any alleged incompetent or disabled person as defined in RCW 11.88.010 interested in the estate who has no legally appointed guardian or limited guardian, the court:

(1) At any stage of the proceeding in its discretion and for such purpose or purposes as it shall indicate, may, and

(2) For hearings held pursuant to RCW 11.52.010, 11.52.020, 11.68.040 and 11.76.050, each as now or hereafter amended, or for entry of an order adjudicating testacy or intestacy and heirship when no personal representative is appointed to administer the estate of the decedent, shall appoint some disinterested person as guardian ad litem to represent such allegedly incompetent or disabled person with reference to any petition, proceeding report, or adjudication of testacy or intestacy without the appointment of a personal representative to administer the estate of decedent in which the alleged incompetent or disabled person may have an interest, who, on behalf of the alleged incompetent or disabled person, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services: PROVIDED, HOWEVER, That where a surviving spouse is the sole beneficiary under the terms of a will, the court may grant a motion by the personal representative to waive the appointment of a guardian ad litem for a person who is the minor child of such surviving spouse and the decedent and who is incompetent solely for the reason of his being under eighteen years of age. [1977 ex.s. c 80 § 15; 1974 ex.s. c 117 § 45; 1971 c 28 § 1; 1969 c 70 § 4; 1965 c 145 § 11.76.080. Prior: 1917 c 156 § 164; RRS § 1534; prior: Code 1881 § 1558; 1854 p 297 § 180.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

"Incompetent" defined: RCW 11.88.010.

11.76.095 Distribution of estates to minors. When a decree of distribution is made by the court in administration upon a decedent's estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, it shall be required that:

(1) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depositary;

(2) A general guardian shall be appointed and qualify and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding;

(3) The provisions of *RCW 11.76.090 are complied with; or

(4) A custodian be selected and the money or property be transferred to the custodian subject to **chapter 11.93 RCW. [1991 c 193 § 28; 1988 c 29 § 5; 1974 ex.s. c 117 § 12; 1971 c 28 § 3; 1965 c 145 § 11.76.095.]

Reviser's note: *(1) RCW 11.76.090 was repealed by 1991 c 193 § 31, effective July 1, 1991.

**(2) Chapter 11.93 RCW was repealed by 1991 c 193 § 27, effective July 1, 1991. Chapter 11.114 RCW was apparently intended.

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.76.100 Receipts for expenses from personal representative. In rendering his accounts or reports the personal representative shall produce receipts or canceled checks for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court until the probate has been completed and the personal representative has been discharged; however, he may be allowed any item of expenditure, not exceeding twenty dollars, for which no receipt is produced, if such item be supported by his own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars in any one estate. [1987 c 363 § 2; 1965 c 145 § 11.76.100. Prior: 1917 c 156 § 170; RRS § 1540; prior: Code 1881 § 1553; 1854 p 297 § 176.]

11.76.110 Order of payment of debts. After payment of costs of administration the debts of the estate shall be paid in the following order:

(1) Funeral expenses in such amount as the court shall order.

(2) Expenses of the last sickness, in such amount as the court shall order.

(3) Wages due for labor performed within sixty days immediately preceding the death of decedent.

(4) Debts having preference by the laws of the United States.

(5) Taxes, or any debts or dues owing to the state.

(6) Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority.

(7) All other demands against the estate. [1965 c 145 § 11.76.110. Prior: 1917 c 156 § 171; RRS § 1541; prior: Code 1881 § 1562; 1860 p 213 § 264; 1854 p 298 § 184.]

Borrowing on general credit of estate: RCW 11.56.280.

Claims against estate: Chapter 11.40 RCW.

Sale, etc., of property—Priority as to realty or personalty: RCW 11.56.015.

Tax constitutes debt—Priority of lien: RCW 82.32.240.

Wages, preference on death of employer: RCW 49.56.020.

11.76.120 Limitation on preference to mortgage or judgment. The preference given in RCW 11.76.110 to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment. [1965 c 145 § 11.76.120. Prior: 1917 c 156 § 172; RRS § 1542; prior: 1897 c 22 § 1; Code 1881 § 1653; 1854 p 298 § 185.]

11.76.130 Expense of monument. Personal representatives of the estate of any deceased person are hereby authorized to expend a reasonable amount out of the estate of the decedent to erect a monument or tombstone suitable to mark the grave or crypt of the said decedent, and the expense thereof shall be paid as the funeral expenses are

paid. [1965 c 145 § 11.76.130. Prior: 1917 c 156 § 175; RRS § 1545; prior: Code 1881 § 1555; 1875 p 127 § 1.]

11.76.150 Payment of claims where estate insufficient. If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid. [1965 c 145 § 11.76.150. Prior: 1917 c 156 § 174; RRS § 1544; prior: Code 1881 § 1564; 1854 p 298 § 186.]

Appropriation to pay debts and expenses: RCW 11.56.150.

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Priority of sale, etc. as between realty and personalty: RCW 11.56.015.

11.76.160 Liability of personal representative. Whenever a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor for his claim or the dividend thereon, except when his inability to make the payment thereof from the property of the estate shall result without fault upon his part. The personal representative shall likewise be liable on his bond to each creditor. [1965 c 145 § 11.76.160. Prior: 1917 c 156 § 176; RRS § 1546; prior: 1891 c 155 § 35; Code 1881 § 1568; 1854 p 299 § 190.]

11.76.170 Action on claim not acted on—Contribution. If, after the accounts of the personal representative have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the personal representative and his bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the personal representative or his sureties be required to make any payment in this section provided for, he or they shall have a right of action against said distributees and creditors to compel them to contribute their just share. [1965 c 145 § 11.76.170. Prior: 1917 c 156 § 177; RRS § 1547; prior: Code 1881 § 1569; 1860 p 214 § 271; 1854 p 299 § 191.]

11.76.180 Order maturing claim not due. If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [1965 c 145 § 11.76.180. Prior: 1917 c 156 § 178; RRS § 1548; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.190 Procedure on contingent and disputed claim. If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require. [1965 c 145 § 11.76.190. Prior: 1917 c 156 § 179; RRS § 1549; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.200 Agent for absentee distributee. When any estate has been or is about to be distributed by decree of the court as provided in this chapter, to any person who has not been located, the court shall appoint an agent for the purpose of representing the interests of such person and of taking possession and charge of said estate for the benefit of such absentee person: PROVIDED, That no public official may be appointed as agent under this section. [1965 c 145 § 11.76.200. Prior: 1955 ex.s. c 7 § 1; 1917 c 156 § 165; RRS § 1535.]

11.76.210 Agent's bond. Such agent shall make, subscribe and file an oath for the faithful performance of his duties, and shall give a bond to the state, to be approved by the court, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive any property of said estate. [1965 c 145 § 11.76.210. Prior: 1955 ex.s. c 7 § 2; 1917 c 156 § 166; RRS § 1536.]

11.76.220 Sale of unclaimed estate—Remittance of proceeds to department of revenue. If the estate remains in the hands of the agent unclaimed for three years, any property not in the form of cash shall be sold under order of the court, and all funds, after deducting a reasonable sum for expenses and services of the agent, to be fixed by the court, shall be paid into the county treasury. The county treasurer shall issue triplicate receipts therefor, one of which shall be filed with the county auditor, one with the court, and one with the department of revenue. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the county treasurer shall forthwith remit them to the department of revenue for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited. [1975 1st ex.s. c 278 § 10; 1965 c 145 § 11.76.220. Prior: 1955 ex.s. c 7 § 4; 1917 c 156 § 167; RRS § 1537.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Escheats: Chapter 11.08 RCW.

11.76.230 Liability of agent. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the funds to the county treasury, and may be sued thereon by any person interested including the state. [1965 c 145 § 11.76.230. Prior: 1955 ex.s. c 7 § 5; 1917 c 156 § 168; RRS § 1538.]

11.76.240 Claimant to proceeds of sale. During the time the estate is held by the agent, or within four years after it is delivered to the county treasury, claim may be made thereto only by the absentee person or his legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him, but leaving lineal descendants surviving,

such lineal descendants may claim. If any claim to the estate is made during the period specified above, the claimant shall forthwith notify the department of revenue in writing of such claim. The court, being first satisfied as to the right of such person to the estate, and after the filing of a clearance from the department of revenue, shall order the agent, or the county treasurer, as the case may be, to forthwith deliver the estate, or the proceeds thereof, if sold, to such person. [1975 1st ex.s. c 278 § 11; 1965 c 145 § 11.76.240. Prior: 1955 ex.s. c 7 § 6; 1917 c 156 § 169; RRS § 1539.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.76.243 Heirs may institute probate proceedings if no claimant appears. If no person appears to claim the estate within four years after it is delivered to the county treasury, as provided by RCW 11.76.240, any heirs of the absentee person may institute probate proceedings on the estate of such absentee within ninety days thereafter. The fact that no claim has been made to the estate by the absentee person during the specified time shall be deemed prima facie proof of the death of such person for the purpose of issuing letters of administration in his estate. In the event letters of administration are issued within the period provided above, the county treasurer shall make payment of the funds held by him to the administrator upon being furnished a certified copy of the letters of administration. [1965 c 145 § 11.76.243. Prior: 1955 ex.s. c 7 § 7.]

11.76.245 Procedure when claim made after time limitation. After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243, the absentee claimant may, at any time, if the assets of the estate have not been claimed under the provisions of RCW 11.76.240 and 11.76.243, notify the department of revenue of his claim to the estate, and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. The department of revenue may appear in answer to such petition. Upon proof being made to the probate court that the claimant is entitled to the estate assets, the court shall render its judgment to that effect and the assets shall be paid to the claimant without interest, upon appropriation made by the legislature. [1975 1st ex.s. c 278 § 12; 1965 c 145 § 11.76.245. Prior: 1955 ex.s. c 7 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.76.247 When court retains jurisdiction after entry of decree of distribution. After the entry of the decree of distribution in the probate proceedings the court shall retain jurisdiction for the purpose of carrying out the provisions of RCW 11.76.200, 11.76.210, 11.76.220, 11.76.230, 11.76.240, 11.76.243 and 11.76.245. [1965 c 145 § 11.76.247. Prior: 1955 ex.s. c 7 § 3.]

11.76.250 Letters after final settlement. A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued. [1965 c 145 § 11.76.250. Prior: 1917 c 156 § 180; RRS § 1550; prior: Code 1881 § 1603; 1854 p 304 § 224.]

Chapter 11.80
ESTATES OF ABSENTEES

Sections

Unknown heirs, etc.—Pleading, etc.: RCW 4.28.140 through 4.28.160; Rules of court: CR 10.

Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.

11.80.010 Petition—Notice—Hearing—Appointment of trustee. Whenever it shall be made to appear by petition to any judge of the superior court of any county that there is property in such county, either real or personal, that requires care and attention, or is in such a condition that it is a menace to the public health, safety or welfare, or that the custodian of such property appointed by the owner thereof is either unable or unwilling to continue longer in the care and custody thereof, and that the owner of such property has absented himself from the county and that his whereabouts is unknown and cannot with reasonable diligence be ascertained, or that the absentee owner is a person defined in RCW 11.80.120, which petition shall state the name of the absent owner, his approximate age, his last known place of residence, the circumstances under which he left and the place to which he was going, if known, his business or occupation and his physical appearance and habits so far as known, the judge to whom such petition is presented shall set a time for hearing such petition not less than six weeks from the date of filing, and shall by order direct that a notice of such hearing be published for three successive weeks in a legal newspaper published in the county where such petition is filed and in such other counties and states as will in the judgment of the court be most likely to come to the attention of the absentee or of persons who may know his whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances as in the judgment of the court will aid in identifying the absentee, and shall contain a request that all persons having knowledge concerning the absentee shall advise the court of the facts: PROVIDED, HOWEVER, That the court may, upon the filing of said petition, appoint a temporary trustee, who shall have the powers, duties and qualifications of a special administrator.

If it shall appear at such hearing that the whereabouts of the absentee is unknown, but there is reason to believe that upon further investigation and inquiry he may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his discretion be liable to disclose the whereabouts of the absentee, but when it shall appear to the judge at such hearing or any adjournment thereof that the whereabouts of the absentee cannot be ascertained, he shall appoint a suitable person resident of the county as trustee of such property, taking into consideration the character of the property and the fitness of such trustee to care for the same, preferring in such appointment the husband or wife of the absentee to his presumptive heirs, the presumptive heirs to kin more remote, the kin to strangers, and creditors to those who are not otherwise interested, provided they are fit persons to have the care and custody of the particular property in question and will accept the appointment and qualify as hereinafter provided. [1972 ex.s. c 83 § 1; 1965 c 145 § 11.80.010. Prior: 1915 c 39 § 1; RRS § 1715-1.]

Special administrators: Chapter 11.32 RCW.

11.80.020 Inventory and appraisement—Bond of trustee. The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint a disinterested and qualified person to appraise such property, and report his appraisement to the court within such time as the court may fix. Upon the coming in of the inventory and appraisement, the judge shall fix the amount of the bond to be given by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his duties as trustee, and for accounting for such property, its rents, issues, profits, and increase. [1967 c 168 § 15; 1965 c 145 § 11.80.020. Prior: 1915 c 39 § 2; RRS § 1715-2.]

11.80.030 Reports of trustee. The trustee shall, at the expiration of one year from the date of his appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his trusteeship, setting forth specifically the amounts received and expended and the conditions of the property. [1965 c 145 § 11.80.030. Prior: 1915 c 39 § 3; RRS § 1715-3.]

11.80.040 Sale of property—Application of proceeds and income. If necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of claims against the estate of a deceased person or for such other purpose as the court may deem proper for the preservation of the estate, the trustee may sell, lease or mortgage real or personal property of the estate under order of the court so to do, which order shall specify the particular property affected and the method, whether by public sale, private sale or by negotiation, and the terms thereof, and the trustee shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court, expend the proceeds received from the sale of such property, and also the rents, issues and profits accruing therefrom in the care, maintenance and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his services and those of his attorney as may be fixed by the court. The notices and procedures in conducting sales, leases and mortgages hereunder shall be as provided in chapter 11.56 RCW. [1965 c 145 § 11.80.040. Prior: 1915 c 39 § 4; RRS § 1715-4.]

Rules of court: SPR 98.12W.

11.80.050 Allowance for support of dependents—Sale of property. Whenever a petition is filed in said estate from which it appears to the satisfaction of the court that the owner of such property left a husband or wife, child or children, dependent upon such absentee for support or upon the property in the estate of such absentee, either in whole or in part, the court shall hold a hearing on said petition, after such notice as the court may direct, and upon such hearing shall enter such order as it deems advisable and may order an allowance to be paid out of any of the property of such estate, either community or separate, as the court shall deem reasonable and necessary for the support and maintenance of such dependent or dependents, pending the return of the absentee, or until such time as the property of said estate may be provisionally distributed to the presumptive heirs or to the devisees and legatees. Such allowance shall be paid by the trustee to such persons and in such manner and at such periods of time as the court may direct. For the purpose of carrying out the provisions of this section the court may direct the sale of any of the property of the estate, either real or personal, in accordance with the provisions of RCW 11.80.040. [1965 c 145 § 11.80.050. Prior: 1925 ex.s. c 80 § 1; RRS § 1715-4a.]

11.80.055 Continuation of absentee's business—Performance of absentee's contracts. Upon a showing of advantage to the estate of the absentee, the court may authorize the trustee to continue any business of the absentee in accordance with the provisions of RCW 11.48.025. The trustee may also obtain an order allowing the performance of the absentee's contracts in accordance with the provisions of chapter 11.60 RCW. [1965 c 145 § 11.80.055.]

11.80.060 Removal or resignation of trustee—Final account. The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his stead. At the termination of his trust, as hereinafter provided or in case of his resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of personal representatives. [1965 c 145 § 11.80.060. Prior: 1915 c 39 § 5; RRS § 1715-5.]

11.80.070 Period of trusteeship. Such trusteeship shall continue until such time as the owner of such property shall return or shall appoint a duly authorized agent or

attorney in fact to care for such property, or until such time as the property shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees of the absentee as hereinafter provided, or until such time as the property shall escheat to the state as hereinafter provided. [1965 c 145 § 11.80.070. Prior: 1915 c 39 § 6; RRS § 1715-6.]

11.80.080 Provisional distribution—Notice of hearing—Will. Whenever the owner of such property shall have been absent from the county for the space of five years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: PROVIDED, That such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead; and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of.

Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published.

If the absentee left a will in the possession of any person such person shall present such will at the time of hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him so to do, and such will shall be opened, read, proven, filed and recorded in the case, as are the wills of decedents. [1965 c 145 § 11.80.080. Prior: 1915 c 39 § 7; RRS § 1715-7.]

Notice for appointment of trustees: RCW 11.80.010.

11.80.090 Hearing—Distribution—Bond of distributees. If it shall appear to the satisfaction of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his whereabouts unknown for the space of five years, or there are strong presumptions that he is dead, the court shall enter an order directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues and profits of any real property so provisionally distributed. [1965 c 145 § 11.80.090. Prior: 1915 c 39 § 8; RRS § 1715-8.]

11.80.100 Final distribution—Notice of hearing—Decree. Whenever the owner of such property shall have been absent from the county for a space of seven years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law or the legatees and devisees under the will, as the case may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the space of seven years and his whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs at law of the absentee or to his devisees and legatees, as the case may be. [1965 c 145 § 11.80.100. Prior: 1915 c 39 § 9; RRS § 1715-9.]

11.80.110 Escheat for want of presumptive heirs. Whenever the owner of such property for which a trustee has been appointed under the provisions of this chapter shall have been absent and unheard of for a period of seven years and no presumptive heirs at law have appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of the chapter shall apply to the court for a final settlement of his account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs. [1965 c 145 § 11.80.110. Prior: 1915 c 39 § 10; RRS § 1715-10.]

Escheats: Chapter 11.08 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

11.80.120 Personnel missing in action, interned, or captured construed as "absentee." Any person serving in or with the armed forces of the United States, in or with the Red Cross, or in or with the merchant marine or otherwise, during any period of time when a state of hostilities exists between the United States and any other power and for one year thereafter, who has been reported or listed as missing in action, or interned in a neutral country, or captured by the enemy, shall be an "absentee" within the meaning of this chapter. [1972 ex.s. c 83 § 2.]

11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form. (1) If the spouse of any absentee owner, or his next of kin, if said absentee has no spouse, shall wish to sell or transfer any property of the absentee which has a gross value of less than five thousand dollars, or shall require the consent of the absentee in any matter regarding the absentee's children, or any other matter in which the gross value of the subject matter is less than five thousand dollars, such spouse or next of kin may apply to the superior court for an order authorizing said sale, transfer, or consent without opening a full trustee proceeding as provided in this chapter. The applicant may make the application without the

assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the superior court.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

. . . . . .

. . . . . ,
Plaintiff,
vs.
. . . . . ,
Defendant.

No. . . . .
PETITION FOR SUMMARY RELIEF

Petitioner, ..., whose residence is . . . . . ., and . . . . . ., Washington, and who is the . . . . . of the absentee, ..., states that the absentee has been . . . . . since . . . . . ., when . . . . . Petitioner desires to sell/transfer . . . . . of the value of . . . . . ., because . . . . . The terms of the sale/transfer are . . . . . Petitioner requires the consent of the absentee for the purpose of . . . . . .

. . . . . .
Petitioner

(Affidavit of Acknowledgment)

(2) The court may, without notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or his dependents.

(3) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer of the property or to give the absentee's consent in any manner described by subsection (1) of this section. [1972 ex.s. c 83 § 3.]

Chapter 11.84
INHERITANCE RIGHTS OF SLAYERS

Sections

Denial or reduction of award in lieu of homestead: RCW 11.52.012.

11.84.010 Definitions. As used in this chapter:

(1) "Slayer" shall mean any person who participates, either as a principal or an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" shall mean any person whose life is so taken.

(3) "Property" shall include any real and personal property and any right or interest therein. [1965 c 145 § 11.84.010. Prior: 1955 c 141 § 1.]

11.84.020 Slayer not to benefit from death. No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following. [1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.]

11.84.030 Slayer deemed to predecease decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

11.84.040 Distribution of decedent's property. Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent. [1965 c 145 § 11.84.040. Prior: 1955 c 141 § 4.]

11.84.050 Distribution of property held jointly with slayer. (1) One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(2) As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other. [1965 c 145 § 11.84.050. Prior: 1955 c 141 § 5.]

11.84.060 Reversion and vested remainder. Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period. [1965 c 145 § 11.84.060. Prior: 1955 c 141 § 6.]

11.84.070 Property subject to divestment, etc. Any interest in property whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter. [1965 c 145 § 11.84.070. Prior: 1955 c 141 § 7.]

11.84.080 Contingent remainders and future interests. As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent;

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent. [1965 c 145 § 11.84.080. Prior: 1955 c 141 § 8.]

11.84.090 Property appointed—Powers of revocation or appointment. (1) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer. [1965 c 145 § 11.84.090. Prior: 1955 c 141 § 9.]

11.84.100 Insurance proceeds. (1) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as secondary beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living. [1965 c 145 § 11.84.100. Prior: 1955 c 141 § 10.]

11.84.110 Payment by insurance company, bank, etc.—No additional liability. Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer. [1965 c 145 § 11.84.110. Prior: 1955 c 141 § 11.]

11.84.120 Rights of persons without notice dealing with slayer. The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and without notice property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this chapter, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds. [1965 c 145 § 11.84.120. Prior: 1955 c 141 § 12.]

11.84.130 Record of conviction as evidence against claimant of property. The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter. [1965 c 145 § 11.84.130. Prior: 1955 c 141 § 13.]

*Evidence, proof of public documents: Chapter 5.44 RCW; **Rules of court:** CR 44.*

11.84.900 Chapter not to be construed as penal. This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed. [1965 c 145 § 11.84.900. Prior: 1955 c 141 § 14.]

Chapter 11.86
DISCLAIMER OF INTERESTS

Sections

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

(1) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property.

"Interest" includes, but is not limited to, an interest created in any of the following manners:

(a) By intestate succession;

(b) Under a will;

(c) Under a trust;

(d) By succession to a disclaimed interest;

(e) By virtue of an election to take against a will;

(f) By creation of a power of appointment;

(g) By exercise or nonexercise of a power of appointment;

(h) By an inter vivos gift, whether outright or in trust;

(i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of RCW 30.22.040;

(j) Under an insurance or annuity contract;

(k) By surviving the death of another joint tenant;

(l) Under an employee benefit plan;

(m) Under an individual retirement account, annuity, or bond;

(n) Under a community property agreement; or

(o) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

(3) "Creator of the interest" means a person who establishes, declares, or otherwise creates an interest.

(4) "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

(5) "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

(7) "Date of the transfer" means:

(a) For an inter vivos transfer, the date of the creation of the interest; or

(b) For a transfer upon the death of the creator of the interest, the date of the death of the creator.

A joint tenancy interest of a deceased joint tenant shall be deemed to be transferred at the death of the joint tenant rather than at the creation of the joint tenancy. [1989 c 34 § 1.]

11.86.021 Disclaimer of interest authorized. (1) A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares or assets, in the manner provided in RCW 11.86.031.

(2) Likewise, a beneficiary may so disclaim through an agent or attorney so authorized by written instrument.

(3) A personal representative, guardian, attorney in fact if authorized under a durable power of attorney under chapter 11.94 RCW, or other legal representative of the estate of a minor, incompetent, or deceased beneficiary, may so disclaim on behalf of the beneficiary, with or without court order, if:

(a) The legal representative deems the disclaimer to be in the best interests of those interested in the estate of the beneficiary and of those who take the disclaimed interest because of the disclaimer, and not detrimental to the best interests of the beneficiary; and

(b) In the case of a guardian, no order has been issued under RCW 11.92.140 determining that the disclaimer is not in the best interests of the beneficiary. [1989 c 34 § 2.]

11.86.031 Contents of disclaimer—Time and filing requirements. (1) The disclaimer shall:

(a) Be in writing;

(b) Be signed by the disclaimant;

(c) Identify the interest to be disclaimed; and

(d) State the disclaimer and the extent thereof.

(2) The disclaimer shall be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

(a) The date the beneficiary attains the age of twenty-one years;

(b) The date of the transfer; or

(c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee of two dollars.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated. [1989 c 34 § 3.]

11.86.041 Disposition of disclaimed interest. (1) Unless the instrument creating an interest directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) Unless the disclaimer directs to the contrary, the beneficiary may receive another interest in the property subject to the disclaimer.

(3) Any future interest taking effect in possession or enjoyment after termination of the interest disclaimed takes effect as if the beneficiary had died prior to the date of the beneficiary's final ascertainment as a beneficiary and the indefeasible vesting of the interest.

(4) The disclaimer is binding upon the beneficiary and all persons claiming through or under the beneficiary.

(5) Unless the instrument creating the interest directs to the contrary, a beneficiary whose interest in a devise or bequest under a will has been disclaimed shall be deemed to

have died for purposes of RCW 11.12.110. [1991 c 7 § 1; 1989 c 34 § 4.]

11.86.051 When right to disclaim is barred. A beneficiary may not disclaim an interest if:

(1) The beneficiary has accepted the interest or a benefit thereunder;

(2) The beneficiary has assigned, conveyed, encumbered, pledged, or otherwise transferred the interest, or has contracted therefor;

(3) The interest has been sold or otherwise disposed of pursuant to judicial process; or

(4) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary. [1989 c 34 § 5.]

11.86.061 Effect of spendthrift or similar restriction. A beneficiary may disclaim under this chapter notwithstanding any limitation on the interest of the beneficiary in the nature of a spendthrift provision or similar restriction. [1989 c 34 § 6.]

11.86.071 Liability for distribution—Effect of disclaimer. No legal representative of a creator of the interest, holder of legal title to property an interest in which is disclaimed, or person having possession of the property shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that the disclaimer is barred as provided in RCW 11.86.051. [1989 c 34 § 7.]

11.86.080 Rights under other statutes or rules not abridged. This chapter shall not abridge the right of any person, apart from this chapter, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest. [1973 c 148 § 9.]

11.86.090 Interests existing on June 7, 1973. Any interest which exists on June 7, 1973 but which has not then become indefeasibly vested, or the taker of which has not then become finally ascertained, or of the existence of the transfer of which the beneficiary lacks knowledge, may be disclaimed after June 7, 1973 in the manner provided in RCW 11.86.031. However, for the purposes of RCW 11.86.031(2), the date on which the beneficiary first knows of the existence of the transfer shall be deemed to be the date of the transfer. [1989 c 34 § 8; 1973 c 148 § 10.]

Chapter 11.88

GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS AND LIMITED GUARDIANS

Sections

Rules of court: Guardians
capacity to sue: CR 17.
judgment for and settlement of claims of minors: SPR 98.16W.
probate proceedings, application for fee, notice: SPR 98.12W.
suit in own name: CR 17.

Adult dependent or developmentally disabled persons, abuse: Chapter 26.44 RCW.

Allowing child to work without permit, penalty: RCW 26.28.060.

Bank soliciting appointment as guardian, penalty: RCW 30.04.260.

Costs against guardian of infant plaintiff: RCW 4.84.140.

Declaratory judgments: Chapter 7.24 RCW.

Embezzlement by guardian: RCW 9A.56.010(7)(b).

Eminent domain
by corporations, service on guardian of minors, idiots, lunatics or distracted persons: RCW 8.20.020.
by state, service of notice on guardian: RCW 8.04.020.

Excise taxes, liability for, notice to department of revenue: RCW 82.32.240.

*Guardian may sue in own name: **Rules of court:** CR 17.*

Habeas corpus, granting of writ to guardian: RCW 7.36.020.

Industrial insurance benefits, appointment of guardian to manage: RCW 51.04.070.

Insane person, appearance by guardian: RCW 4.08.060.

Investment of trust funds, guardians subject to chapter 30.24 RCW: RCW 11.110.015.

Investments, authorized
generally: Chapter 30.24 RCW.
housing authority bonds: RCW 35.82.220.
United States corporation bonds: RCW 39.60.010.

Jurors, challenge of, guardian and ward relationship ground for implied bias: RCW 4.44.180.

Lawful use of force: RCW 9A.16.020.

Limitation of actions by ward against guardian, recovery of real estate sold by guardian: RCW 4.16.070.

Mental illness, proceedings: Chapter 71.05 RCW.

Minor's personal service contracts, recovery by guardian barred: RCW 26.28.050.

Motor vehicle financial responsibility, release by injured minor executed by guardian: RCW 46.29.120.

Name, action for change of—Fees: RCW 4.24.130.

Partition: Chapter 7.52 RCW.

Public assistance grants, appointment of guardian to receive: RCW 74.08.280, 74.12.250.

Real estate licenses, guardian exemption: RCW 18.85.110.

Savings and loan association, guardian may be member of: RCW 33.20.060.

Seduction, action for seduction of ward: RCW 4.24.020.

State hospital patients, superintendent custodian of estate: RCW 72.23.230.

Support and care of dependent child, liability of guardian, procedure, judgment: RCW 13.34.160, 13.34.170.

Uniform veterans' guardianship act: Chapter 73.36 RCW.

Veterans' estates, appointment of director of veterans' affairs as guardian: RCW 73.04.130.

Volunteer fire fighters' relief, appointment of guardian for fire fighter: RCW 41.24.140.

Washington uniform transfers to minors act: Chapter 11.114 RCW.

Witness, guardian as: RCW 5.60.030.

11.88.005 Legislative intent. It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs. [1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

Effective date—1990 c 122: "This act shall take effect on July 1, 1991." [1990 c 122 § 38.]

Severability—1977 ex.s. c 309: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 309 § 18.]

11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote and shall lose the right to vote, unless the court specifically finds that the person is rationally capable of exercising the franchise. Imposition of a limited guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise. [1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565;

prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.020 Qualifications. Any suitable person over the age of eighteen years, or any parent under the age of eighteen years may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an incapacitated person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an incapacitated person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW. No person is qualified to serve as a guardian who is

(1) under eighteen years of age except as otherwise provided herein;

(2) of unsound mind;

(3) convicted of a felony or of a misdemeanor involving moral turpitude;

(4) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(5) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(6) a person whom the court finds unsuitable. [1990 c 122 § 3; 1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Banks and trust companies may act as guardian: RCW 11.36.010.

11.88.030 Petition—Contents—Hearing. (1) Any person or entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both, and why no alternative to guardianship is appropriate;

(i) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(j) The requested term of the limited guardianship to be included in the court's order of appointment;

(k) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE
PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE . . . . . COUNTY SUPERIOR COURT BY . . . . . IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY OR DIVORCE;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;
(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
(6) TO POSSESS A LICENSE TO DRIVE;
(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date. [1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Vulnerable elderly person—Lack of capacity to consent—Guardianship action by department of social and health services: RCW 74.34.060.

11.88.040 Notice and hearing, when required—Service—Procedure. Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally to the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse of the alleged incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition. [1991 c 289 § 3; 1990 c 122 § 5; 1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 1969 c 70 § 1; 1965 c 145 § 11.88.040. Prior: 1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Waiver of notice: RCW 11.16.083.

11.88.045 Legal counsel and jury trial—Proof. (1)(a) Alleged incapacitated individuals shall have the right to be represented by counsel at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to

funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged incapacitated person is further entitled upon request to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW or licensed or certified psychologist selected by the guardian ad litem. The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician or psychologist;

(b) The education and experience of the physician or psychologist pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person as known to the examining physician or psychologist;

(e) The findings of the examining physician or psychologist as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed. [1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.080 Testamentary guardians. When either parent is deceased, the surviving parent of any minor child may, by last will in writing appoint a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the will or afterwards, to continue during the minority of such child or for any less time. Every testamentary guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's testamentary appointment unless the court finds, based upon evidence presented at a hearing on the matter, that the individual appointed in the surviving parent's will is not qualified to serve. [1990 c 122 § 7; 1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.090 Guardian ad litem—Appointment—Qualifications—Duties. (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180, as now or hereafter amended, shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

(2) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to

(a) be free of influence from anyone interested in the result of the proceeding;

(b) have the requisite knowledge, training, or expertise to perform the duties required by this section.

No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the

petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(3)(a) The superior court of each county shall develop by September 1, 1991, a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardians ad litem only persons whose names appear on the registry, except in extraordinary circumstances.

(b) To be eligible for the registry a person shall:

(i) Present a written statement of qualifications describing the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW; and

(ii) Complete a training program adopted by the court, or, in the absence of a locally adopted program, a candidate for inclusion upon the registry shall have completed a model training program as described in (d) of this subsection.

(c) The superior court of each county shall approve training programs designed to:

(i) Train otherwise qualified human service professionals in those aspects of legal procedure and the requirements of chapters 11.88 and 11.92 RCW with which a guardian ad litem should be familiar;

(ii) Train otherwise qualified legal professionals in those aspects of medicine, social welfare, and social service delivery systems with which a guardian ad litem should be familiar.

(d) The superior court of each county may approve a guardian ad litem training program on or before June 1, 1991. The department of social and health services, aging and adult services administration, shall convene an advisory group to develop a model guardian ad litem training program. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, and other interested parties.

(e) Any superior court that has not adopted a guardian ad litem training program by September 1, 1991, shall require utilization of a model program developed by the advisory group as described in (d) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(4) The guardian ad litem's written statement of qualifications required by RCW 11.88.090(3)(b)(i) shall be made part of the record in each matter in which the person is appointed guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(v) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vi) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(vii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(viii) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the

guardian ad litem, and at least ten days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her spouse, all children not residing with a notified person, those persons described in (d) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150;

(f) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter amended.

(7) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person.

(8) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That if no guardian or limited guardian is appointed the court may charge such fee to the petitioner or the alleged incapacitated person, or divide the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(9) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense. [1991 c 289 § 5; 1990 c 122 § 8; 1977 ex.s. c 309 § 6; 1975 1st ex.s. c 95 § 9; 1965 c 145 § 11.88.090. Prior: 1917 c 156 § 211; RRS § 1581; prior: Code 1881 § 1619; 1873 p 318 § 314; 1860 p 228 § 336.]

Rules of court: Judgment for and settlement of claims of minors: SPR 98.16W.

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Award in lieu of homestead, appointment for minor children or incapacitated persons: RCW 11.52.014.

Costs against guardian of infant plaintiff: RCW 4.84.140.

District judge, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.

Execution against for costs against infant plaintiff: RCW 4.84.140.

Family allowances in probate of property, appointment of guardian ad litem for minor children or incapacitated persons of deceased: Chapter 11.52 RCW.

Homestead, awarding to survivor, guardian ad litem appointed for minor children or incapacitated persons of deceased: RCW 11.52.020.

Insane persons
appearance in civil action: RCW 4.08.060.
appointment for civil actions: RCW 4.08.060.

Liability for costs against infant plaintiffs: RCW 4.84.140.

Minors, for
appearance in civil actions: RCW 4.08.050.
appointment for civil actions: RCW 4.08.050.
district court proceedings: RCW 12.04.150.

Registration of land titles, appointment for minors: RCW 65.12.145.

11.88.095 Disposition of guardianship petition. (1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) When the next report of the guardian is due;

(d) Whether the guardian ad litem shall continue acting as guardian ad litem;

(e) Whether a review hearing shall be required upon the filing of the inventory;

(f) The authority of the guardian, if any, for investment and expenditure of the ward's estate; and

(g) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose. [1991 c 289 § 6; 1990 c 122 § 9.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.100 Oath and bond of guardian or limited guardian. Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath

and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county of . . . . . ., from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incapacitated person, or his or her property, and render and pay to such incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order, then this obligation shall be void, otherwise it shall remain in effect.

The bond shall be for the use of the incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That the guardian or limited guardian shall file a yearly statement showing the monthly income of the incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months. [1990 c 122 § 10; 1983 c 271 § 1; 1977 ex.s. c 309 § 7; 1975 1st ex.s. c 95 § 10; 1965 c 145 § 11.88.100. Prior: 1961 c 155 § 1; 1951 c 242 § 1; 1947 c 145 § 1; 1945 c 41 § 1; 1917 c 156 § 203; Rem. Supp. 1947 § 1573; prior: 1905 c 17 § 1; Code 1881 § 1612; 1860 p 226 § 329.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Citation of surety on bond: RCW 11.92.056.

Suretyship: Chapter 19.72 RCW.

11.88.105 Reduction in amount of bond. In cases where all or a portion of the estate consisting of cash or securities has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court stating that such corporations hold the cash or securities subject to order of court, the court may in its discretion dispense with the bond or reduce the amount of the bond by the amount of such deposits. [1990 c 122 § 11; 1975 1st ex.s. c 95 § 11; 1965 c 145 § 11.88.105.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.107 When bond not required. In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be waived. [1990 c 122 § 12; 1977 ex.s. c 309 § 8; 1975 1st ex.s. c 95 § 12; 1965 c 145 § 11.88.107.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.110 Law on executors' and administrators' bonds applicable. All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians. [1975 1st ex.s. c 95 § 13; 1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

11.88.115 Notice to department of revenue. Duty of guardian to notify department of revenue; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.88.120 Procedure on removal or death of guardian or limited guardian—Delivery of estate to successor. (1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling

a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court. [1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.125 Standby limited guardian or limited guardian. (1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person, shall file in writing with the court, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.040 as now or hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. [1991 c 289 § 8; 1990 c 122 § 15; 1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.130 Transfer of jurisdiction and venue. The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person and such notice to an alleged incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred. [1990 c 122 § 16; 1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.88.140 Termination of guardianship or limited guardianship. (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE — NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the . . . . . day of . . . . . ., 19. . .; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this . . . . . day of . . . . . ., 19. . .

. . . . . .

Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within thirty days of the date of termination, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates. [1991 c 289 § 9; 1990 c 122 § 17; 1977 ex.s. c 309 § 11; 1975 1st ex.s. c 95 § 16; 1965 c 145 § 11.88.140.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Procedure on removal or death of guardian or limited guardian: RCW 11.88.120.

Settlement of estate upon termination other than by death intestate: RCW 11.92.053.

11.88.150 Administration of deceased incapacitated person's estate. (1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those funds under the

control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by *RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an incapacitated person intestate the guardian or limited guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased incapacitated person without further letters unless within forty days after death of the incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his account, and may apply to the complete administration of the estate of the deceased incapacitated person with the consent of the surety. If letters of administration are granted upon petition filed within forty days after the death of the incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims. [1990 c 122 § 18; 1977 ex.s. c 309 § 12; 1975 1st ex.s. c 95 § 17; 1965 c 145 § 11.88.150.]

*Reviser's note: The reference to RCW 68.50.150 appears to be erroneous. RCW 68.50.160 was apparently intended.

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Settlement of estate upon termination other than by death intestate: RCW 11.92.053.

11.88.160 Guardianships involving veterans. For guardianships involving veterans see chapter 73.36 RCW. [1990 c 122 § 13.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Chapter 11.92

GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN OR LIMITED GUARDIAN

Sections

11.92.010 Guardians or limited guardians under court control—Legal age. Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be eighteen years old. [1975 1st ex.s. c 95 § 18; 1971 c 28 § 5; 1965 c 145 § 11.92.010. Prior: 1923 c 72 § 1; 1917 c 156 § 202; RRS § 1572. Formerly RCW 11.92.010 and 11.92.020.]

Age of majority: RCW 26.28.010.

Married persons deemed to be of full age: RCW 26.28.020.

Termination of guardianship or limited guardianship upon attainment of legal age: RCW 11.88.140.

Transfer of jurisdiction and venue: RCW 11.88.130.

11.92.035 Claims. (1) DUTY OF GUARDIAN TO PAY. A guardian of the estate is under a duty to pay from the estate all just claims against the estate of the incapacitated person, whether they constitute liabilities of the incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incapacitated person or his or her estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude the guardian's personal liability for his or her own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid,

preference shall be given to (a) the expenses of administration including guardian's fees, attorneys' fees, and court costs; (b) prior claims for the care, maintenance and education of the incapacitated person and of the person's dependents over other claims. Subject to court orders limiting such powers, a limited guardian of an estate shall have the same authority to pay claims.

(2) CLAIMS MAY BE PRESENTED. Any person having a claim against the estate of an incapacitated person, or against the guardian of his or her estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations. After ten days' notice to a guardian or limited guardian, a hearing on the claim shall be held, at which upon proof thereof and after consideration of any defenses or objections by the guardian, the court may enter an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed. [1990 c 122 § 19; 1975 1st ex.s. c 95 § 19; 1965 c 145 § 11.92.035.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Actions against guardian: RCW 11.92.060.

Claims against estate of deceased incompetent or disabled person: RCW 11.88.150.

Disbursement for claims on termination of guardianship or limited guardianship: RCW 11.88.140.

11.92.040 Duties of guardian or limited guardian in general. It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the

incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof. [1991 c 289 § 10; 1990 c 122 § 20; 1985 c 30 § 9. Prior: 1984 c 149 § 12; 1979 c 32 § 2; 1977 ex.s. c 309 § 13; 1975 1st ex.s. c 95 § 20; 1965 c 145 § 11.92.040; prior: 1957 c 64 § 1; 1955 c 205 § 15; 1941 c 83 § 1; 1917 c 156 § 205; Rem. Supp. 1941 § 1575; prior: 1895 c 42 § 1; Code 1881 § 1614.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Compulsory school attendance law, duty to comply with: RCW 28A.27.010.

Disabled person, defined: RCW 11.88.010.

11.92.043 Additional duties. It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040. [1991 c 289 § 11; 1990 c 122 § 21.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.050 Intermediate accounts—Hearing—Order. (1) Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian or limited guardian to the date of said interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of the guardian or limited guardian, if the court be satisfied that the actions of

the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after said incapacitated person attains his majority any such interim account may be challenged by said incapacitated person on the ground of fraud.

(2) The procedure established in subsection (1) of this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043. [1990 c 122 s 23; 1975 1st ex.s. c 95 s 21; 1965 c 145 s 11.92.050. Prior: 1943 c 29 s 1; Rem. Supp. 1943 s 1575-1.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.053 Settlement of estate upon termination other than by death intestate. Within ninety days after the termination of a guardianship for any reason other than the death of the incapacitated person intestate, the guardian or limited guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040(2) with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to such petition or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved.

At such hearing on said petition of the guardian or limited guardian, if the court be satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order: PROVIDED, That within one year after said incompetent attains his majority any such account may be challenged by the incapacitated person on the ground of fraud. [1990 c 122 § 24; 1965 c 145 § 11.92.053.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Administration of deceased incompetent's estate: RCW 11.88.150.

Procedure on removal or death of guardian—Delivery of estate to successor: RCW 11.88.120.

Termination of guardianship: RCW 11.88.140.

11.92.056 Citation of surety on bond. If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incapacitated person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [1990 c 122 § 25; 1975 1st ex.s. c 95 § 22; 1965 c 145 § 11.92.056.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.060 Guardian to represent incapacitated person—Compromise of claims—Service of process. (1) GUARDIAN MAY SUE AND BE SUED. When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

(2) JOINDER, AMENDMENT AND SUBSTITUTION. When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate the guardian may be sued both as guardian and in his or her personal capacity in the same action. Misnomer or the bringing of the action by or against the incapacitated person shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the incapacitated person. If the appointment of the guardian of the estate is terminated, his or her successor may be substituted; if the incapacitated person dies, his or her personal representative may be substituted; if the incapacitated person is no longer incapacitated the person may be substituted.

(3) GARNISHMENT, ATTACHMENT AND EXECUTION. When there is a guardian of the estate, the property and rights of action of the incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the

incapacitated person or the guardian of the person's estate as such.

(4) COMPROMISE BY GUARDIAN. Whenever it is proposed to compromise or settle any claim by or against the incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incapacitated person, may enter an order authorizing the settlement or compromise be made.

(5) LIMITED GUARDIAN. Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian. [1990 c 122 § 26; 1975 1st ex.s. c 95 § 23; 1965 c 145 § 11.92.060. Prior: 1917 c 156 § 206; RRS § 1576; prior: 1903 c 100 § 1; Code 1881 § 1611; 1860 p 226 § 328.]

Rules of court: SPR 98.08W, 98.10W, 98.16W.

Effective date—1990 c 122: See note following RCW 11.88.005.

Action against guardian deemed claim: RCW 11.92.035.

11.92.090 Sale, exchange, lease, or mortgage of property. Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of the incapacitated person for the purpose of paying debts or for the care, support and education of the incapacitated person, or to redeem any property of the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper. [1990 c 122 § 27; 1975 1st ex.s. c 95 § 24; 1965 c 145 § 11.92.090. Prior: 1917 c 156 § 212; RRS § 1582; prior: Code 1881 § 1620; 1855 p 17 § 14.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.096 Guardian access to certain held assets. (1) All financial institutions as defined in RCW 30.22.040(12), all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 (hereafter individually and collectively referenced as "institution") shall provide the guardian access and control over the asset(s) described in (a)(vii) of this subsection, including but not limited to delivery of the asset to the guardian, upon receipt of the following:

(a) An affidavit containing as an attachment a true and correct copy of the guardian's letters of guardianship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed guardian with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the guardianship;

(iii) The name of the incapacitated person and the name of the client or depositor (which names shall be the same);

(iv) The account or the safety deposit box number or numbers;

(v) The address of the client or depositor;

(vi) The name and address of the affiant-guardian being provided assets or access to assets;

(vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the guardian receives delivery or control of each asset solely in its capacity as guardian;

(viii) The date the guardian assumed control over the assets; and

(ix) That a true and correct copy of the letters of guardianship duly issued by a court to the guardian is attached to the affidavit; and

(b) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of guardianship.

The affidavit shall be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

(2) Any guardian provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the guardian. Any inventory shall be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section shall include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the guardian of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section.

(3) Any institution to which an affidavit complying with subsection (1) of this section is submitted may rely on the affidavit without inquiry and shall not be subject to any liability of any nature whatsoever to any person whatsoever, including but not limited to the institution's client or depositor or any other person with an ownership or other interest in or right to the asset, for the reliance or for providing the guardian access and control over the asset, including but not limited to delivery of the asset to the guardian. [1991 c 289 § 13.]

11.92.100 Petition—Contents. Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to the incapacitated person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incapacitated person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incapacitated person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is requested for the liquidation thereof.

(8) The age of the incapacitated person, where and with whom residing.

(9) All other facts connected with the estate and condition of the incapacitated person necessary to enable the court to fully understand the same. If there is no personal estate belonging to the incapacitated person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application. [1990 c 122 § 28; 1975 1st ex.s. c 95 § 25; 1965 c 145 § 11.92.100. Prior: 1917 c 156 § 213; RRS § 1583; prior: Code 1881 § 1621; 1860 p 228 § 338; 1855 p 17 § 15.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.110 Sale of real estate. The order directing the sale of any of the real property of the estate of the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs. [1990 c 122 § 29; 1975 1st ex.s. c 95 § 26; 1965 c 145 § 11.92.110. Prior: 1917 c 156 § 214; RRS § 1524; prior: Code 1881 § 1623; 1860 p 229 § 340.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.115 Return and confirmation of sale. The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incapacitated person and of the person's estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published. [1990 c 122 § 30; 1975 1st ex.s. c 95 § 27; 1965 c 145 § 11.92.115.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.120 Confirmation conclusive. No sale by any guardian or limited guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud. [1975 1st ex.s. c 95 § 28; 1965 c 145 § 11.92.120. Prior: 1917 c 156 § 215; RRS § 1585; prior: Code 1881 § 1625; 1860 p 229 § 343.]

11.92.125 Broker's fee and closing expenses—Sale, exchange, mortgage, or lease of real estate. In connection with the sale, exchange, mortgage, lease, or grant of easement or license in any property, the court may authorize the guardian or limited guardian to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting title insurance, survey, revenue stamps, and other necessary costs and expenses in connection therewith. [1977 ex.s. c 309 § 15; 1965 c 145 § 11.92.125.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.92.130 Performance of contracts. If any person who is bound by contract in writing to perform shall become incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of the incapacitated person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW. [1990 c 122 § 31; 1975 1st ex.s. c 95 § 29; 1965 c 145 § 11.92.130. Prior: 1923 c 142 § 5; RRS § 1585a.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.140 Court authorization for actions regarding guardianship funds. The court, upon the petition of a guardian of the estate of an incapacitated person other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96 RCW, may authorize the guardian to take any action, or to apply funds not required for the incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incapacitated person's contingent and expec-

tant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incapacitated person's estate which may extend beyond the incapacitated person's disability or life, the establishment of custodianships for the benefit of a minor under *chapter 11.93 RCW, the Washington uniform transfers to minors act, the exercise of options of the incapacitated person to purchase securities or other property, the exercise of the incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incapacitated person's right to any elective share in the estate of the incapacitated person's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the savings expected to accrue. The proposed action or application of funds may include gifts of the incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incapacitated person, or may be made to individuals or charities in which the incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incapacitated person under the incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incapacitated person insofar as the intentions can be ascertained, and if the incapacitated person's intentions cannot be ascertained, the incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties. [1991 c 193 § 32; 1990 c 122 § 32; 1985 c 30 § 10. Prior: 1984 c 149 § 13.]

*Reviser's note: Chapter 11.93 RCW was repealed by 1991 c 193 § 27, effective July 1, 1991. Chapter 11.114 RCW was apparently intended.

Effective date—Severabillty—1991 c 193: See RCW 11.114.903 and 11.114.904.

Effective date—1990 c 122: See note following RCW 11.88.005.

Short title—Application—Purpose—Severabllity—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.92.150 Request for special notice of proceedings. At any time after the issuance of letters of guardianship in the estate of any person and/or incapacitated person, any person interested in the estate, or in the incapacitated person, or any relative of the incapacitated person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the guardianship or limited guardianship of the person and/or estate is pending, a written request stating the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide copies of all documents filed with the court and advance notice of his or her application for court approval of any action in the guardianship.

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, report, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated. [1990 c 122 § 33; 1985 c 30 § 11. Prior: 1984 c 149 § 14; 1975 1st ex.s. c 95 § 30; 1969 c 18 § 1; 1965 c 145 § 11.92.150; prior: 1925 ex.s. c 104 § 1; RRS § 1586-1.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.92.160 Citation for failure to file account or report. Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incapacitated person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts. [1990 c 122 § 34; 1975 1st ex.s. c 95 § 31; 1965 c 145 § 11.92.160. Prior: 1925 ex.s. c 104 § 2; RRS § 1586-2.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

11.92.170 Removal of property of nonresident incapacitated person. Whenever it is made to appear that

it would be in the best interests of the incapacitated person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incapacitated person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the incapacitated person. [1990 c 122 § 35; 1977 ex.s. c 309 § 16; 1975 1st ex.s. c 95 § 32; 1965 c 145 § 11.92.170. Prior: 1917 c 156 § 217; RRS § 1587; prior: Code 1881 § 1628; 1873 p 320 § 323.]

Effective date—1990 c 122: See note following RCW 11.88.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.92.180 Compensation and expenses of guardian or limited guardian—Attorney's fees. A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [1991 c 289 § 12; 1990 c 122 § 36; 1975 1st ex.s. c 95 § 33; 1965 c 145 § 11.92.180. Prior: 1917 c 156 § 216; RRS § 1586; prior: Code 1881 § 1627; 1855 p 19 § 25.]

Rules of court: SPR 98.12W.

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.185 Concealed or embezzled property. The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incapacitated persons subject to administration under this title. [1990 c 122 § 37; 1975 1st ex.s. c 95 § 34; 1965 c 145 § 11.92.185.]

Effective date—1990 c 122: See note following RCW 11.88.005.

11.92.190 Detention of person in residential placement facility against will prohibited—Effect of court order—Service of notice of residential placement. No residential treatment facility which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an incompetent or disabled person shall be void and of no force or effect.

Nothing in this section shall be construed to require a court order authorizing placement of an incompetent or disabled person in a residential treatment facility if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an incompetent or disabled person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record. [1977 ex.s. c 309 § 14.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Chapter 11.94
POWER OF ATTORNEY

Sections

11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument. (1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent

nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. Unless he or she is the spouse, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility where the principal resides or receives care. This authorization is subject to the same limitations as those that apply to a guardian under *RCW 11.92.040(3) (a) through (d). [1989 c 211 § 1; 1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.]

***Reviser's note:** Subsection (3) (a) through (d) of RCW 11.92.040 was deleted by 1990 c 122 § 20.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.94.020 Effect of death, disability, or incompetence of principal—Acts without knowledge. (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by RCW 11.94.010, does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact, or agent, stating that the attorney did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. [1985 c 30 § 26. Prior: 1984 c 149 § 27; 1977 ex.s. c 234 § 27; 1974 ex.s. c 117 § 53.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.94.030 Banking transactions. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal, and (2) to enter any safe deposit box to which the principal has a right of access, subject to any contrary provision in any agreement governing the safe deposit box. [1985 c 30 § 27. Prior: 1984 c 149 § 28.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.040 Release from liability for reliance on power of attorney document. Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability thereby. Unless the document contains a time limit, the length of time which has elapsed from its date of execution shall not prevent a party from reasonably relying on the document. Unless the document contains a requirement that it be filed for record to be effective, a person shall place reasonable reliance on it regardless of whether it is so filed. [1985 c 30 § 28. Prior: 1984 c 149 § 29.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.043 Durable power of attorney—Revocation or termination. The durable power of attorney provided for under this chapter shall continue in effect until revoked or terminated by the principal, by a court-appointed guardian, or by court order. [1989 c 211 § 2.]

11.94.046 Durable power of attorney—Validity. (1) A durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989, that specifically authorizes an attorney-in-fact to make decisions relating to the health care of the principal shall be deemed valid, except for the exemptions provided for in RCW 11.94.010(3).

(2) Nothing in this chapter affects the validity of a decision made under a durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989. [1989 c 211 § 3.]

11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent. (1) Although a designated attorney in fact or agent has all

powers of absolute ownership of the principal, or the document has language to indicate that the attorney in fact or agent shall have all the powers the principal would have if alive and competent, the attorney in fact or agent shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's wills, codicils, life insurance beneficiary designations, employee benefit plan beneficiary designations, trust agreements, community property agreements; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney in fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy. [1989 c 87 § 1; 1985 c 30 § 29. Prior: 1984 c 149 § 30.]

Effective dates—1989 c 87: "(1) Sections 7 and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

(2) Sections 1 through 5 of this act shall take effect October 1, 1989." [1989 c 87 § 9.] "Sections 1 through 5 of this act" include the 1989 c 87 amendments to RCW 11.94.050, 74.09.510, and 74.09.700, and the enactment of RCW 74.09.565 and 74.09.575, respectively. "Sections 7 and 8 of this act" consist of the enactment of RCW 74.09.585 and 74.09.595.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.060 Conveyance or encumbrance of homestead. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then these powers include the right to convey or encumber the principal's homestead. [1985 c 30 § 30. Prior: 1984 c 149 § 31.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.900 Application of 1984 c 149 §§ 26 through 31 as of January 1, 1985. *Sections 26 through 31, chapter 149, Laws of 1984 apply as of January 1, 1985, to all existing or subsequently executed instruments but shall not apply to any instrument the terms of which expressly or impliedly make those sections inapplicable. [1985 c 30 § 140.]

***Reviser's note:** "Sections 26 through 31, chapter 149, Laws of 1984" were codified as RCW 11.94.010 through 11.94.060 and were amended in 1985.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.95
POWERS OF APPOINTMENT

Sections

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.95.010 Releases. Any power exercisable by deed, will, or otherwise, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the holder and delivered as hereinafter provided. [1985 c 30 § 31. Prior: 1984 c 149 § 33; 1955 c 160 § 1. Formerly RCW 64.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.020 Releases—Partial releases. A power which is releasable may be released with respect to the whole or any part of the property subject to the power and may also be released in such manner as to reduce or limit the persons or objects, or classes of persons or objects, in whose favor the powers would otherwise be exercisable. A release of a power shall not be deemed to make imperative a power which was not imperative prior to the release, unless the instrument of release expressly so provides. [1985 c 30 § 32. Prior: 1984 c 149 § 34; 1955 c 160 § 2. Formerly RCW 64.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.030 Releases—Delivery. In order to be effective as a release of a power, the instrument of release must be delivered to any trustee or co-trustee of the property, and the person holding the property, to which the power relates. Delivery of a copy of the instrument of release may be made to the secretary of state, which shall from the time of delivery constitute notice of the release to all other persons. [1985 c 30 § 33. Prior: 1984 c 149 § 35; 1955 c 160 § 3. Formerly RCW 64.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.040 Releases—Effect of RCW 11.95.010 through 11.95.050 on prior releases. The enactment of RCW 11.95.010 through 11.95.050 shall not be construed to impair the validity of any release heretofore made which was otherwise valid when executed. [1985 c 30 § 34. Prior:

1984 c 149 § 36; 1955 c 160 § 4. Formerly RCW 64.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.050 Releases—Filing with secretary of state—Fee. It shall be the duty of the secretary of state to mark each instrument of release filed in his office with a consecutive file number and with the date and hour of filing, and to note and index the filing in a suitable alphabetical index according to the name or names of the person or persons signing the same and containing a notation of the address or addresses of the signer or signers, if given in the instrument. The fee for filing is one dollar. The secretary of state shall deliver or mail to the person filing the instrument a receipt showing the filing number and date and hour of filing. [1985 c 30 § 35. Prior: 1955 c 160 § 5. Formerly RCW 64.24.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.95.060 Exercise of powers of appointment. (1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the instrument granting the power, that manifests an intent to exercise the power. Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made if the person had no knowledge that the power had been exercised and had made a reasonable effort to determine if the power had been exercised. A testamentary residuary clause which does not manifest an intent to exercise a power is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be revoked in the same manner at any time before the property becomes distributable upon occurrence of the event specified, except that any contrary provisions in the written instrument exercising the power, including provisions stating the exercise of the power is irrevocable, shall be controlling. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised. [1989 c 33 § 1; 1985 c 30 § 36. Prior: 1984 c 149 § 38.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.070 Application of chapter—Application of 1984 c 149 to powers of appointment. (1) This chapter does not apply to any power as trustee described in and subject to RCW 11.98.019.

(2) *Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984 and the 1984 recodification of RCW 64.24.050 as RCW 11.95.050 apply as of January 1, 1985, to all existing or subsequently created powers of appointment, but not to any power of appointment that expressly or by necessary implication make[s] those 1984 changes inapplicable. [1985 c 30 § 37. Prior: 1984 c 149 § 39.]

***Reviser's note:** "Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984" were codified as RCW 11.95.010 through 11.95.040, 11.95.060, and 11.95.070. RCW 11.95.060 and 11.95.070 were amended in 1985.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.96
JURISDICTION AND PROCEEDINGS

Sections

11.96.009 Original jurisdiction in probate and trust matters—Powers of courts. (1) The superior court shall

have original jurisdiction over probates in the following instances:

(a) When a resident of the state dies; or

(b) When a nonresident of the state dies in the state; or

(c) When a nonresident of the state dies outside the state.

(2) The superior court shall have original jurisdiction over trusts and trust matters.

(3) The superior courts in the exercise of their jurisdiction of matters of probate and trusts shall have power to probate or refuse to probate wills, appoint personal representatives of deceased, incompetent, or disabled persons and administer and settle all such estates, and administer and settle all trusts and trust matters, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction. [1985 c 31 § 2. Prior: 1984 c 149 § 41; 1965 c 145 § 11.02.010; prior: 1917 c 156 § 1; RRS § 1371; prior: 1891 c 155 § 1; Code 1881 § 1299; 1873 p 253 § 3; 1863 p 199 § 3; 1860 p 167 § 3; 1854 p 309 § 3. Formerly RCW 11.02.010 and 11.16.010.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

"Incompetent" person defined; includes minors: RCW 11.88.010.

Judicial transfer of trust assets or administration, requirements: RCW 11.98.055.

"Personal representative" defined: RCW 11.02.005(1).

11.96.020 Legislative intent—Powers of courts when law inapplicable, insufficient, or doubtful. It is the intention of this title that the courts mentioned shall have full and ample power and authority to administer and settle all estates of decedents and incompetent and disabled persons in this title mentioned and to administer and settle all trusts and trust matters. If the provisions of this title with reference to the administration and settlement of such estates or trusts should in any cases and under any circumstances be inapplicable or insufficient or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such estates or trusts may be by the court administered upon and settled. [1985 c 31 § 3. Prior: 1984 c 149 § 42; 1965 c 145 § 11.02.020; prior: 1917 c 156 § 219; RRS § 1589. Formerly RCW 11.02.020 and 11.16.020.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.030 Exercise of powers—Orders, writs, process, etc. In exercising any of the jurisdiction or powers by this title given or intended to be given, the court is authorized to make, issue and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes not inconsistent with the provisions of this title, which may be considered proper or necessary in the exercise of such jurisdiction. [1985 c 31 § 4. Prior: 1965 c 145 § 11.02.030; prior: 1917 c 156 § 220; RRS § 1590. Formerly RCW 11.02.030 and 11.16.030.]

11.96.040 Situs of trust. Unless otherwise provided in the instrument creating the trust, the situs of a trust is the place where the principal place of administration of the trust is located. As used in this section, the "principal place of administration of the trust" is the trustee's usual place of business where the day-to-day records pertaining to the trust are kept or the trustee's residence if the trustee has no such place of business. [1985 c 31 § 5. Prior: 1984 c 149 § 45.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.050 Venue in proceedings involving probate or trust matters. For purposes of venue in proceedings involving probate or trusts and trust matters, the following shall apply:

(1) Proceedings under Title 11 RCW pertaining to trusts shall be commenced either:

(a) In the superior court of the county in which the situs of the trust is located as provided in RCW 11.96.040;

(b) In the superior court of the county in which a trustee resides or has its principal place of business; or

(c) With respect to testamentary trusts, in the superior court of the county where letters testamentary were granted to a personal representative, and in the absence of such letters, then in any county where letters testamentary could have been granted in accordance with subsection (2) of this section.

(2) Wills shall be proven, letters testamentary or of administration granted, and other proceedings under Title 11 RCW pertaining to probate commenced, either:

(a) In the county in which the decedent was a resident at the time of death;

(b) In the county in which the decedent died, or in which any part of the estate may be, if the decedent was not a resident of this state; or

(c) In the county in which any part of the estate may be, the decedent having died out-of-state, and not having been resident in this state at the time of death.

(3) No action undertaken is defective or invalid because of improper venue if the court has jurisdiction of the matter. [1985 c 31 § 6. Prior: 1984 c 149 § 46.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.060 Statutes of limitations. (1) Any action against the trustee of an express trust, excluding those trusts excluded from the definition of express trusts under RCW 11.98.009, but including all express trusts, whenever executed, for any breach of fiduciary duty, must be brought within three years from the earlier of (a) the time the alleged breach was discovered or reasonably should have been discovered, (b) the discharge of a trustee from the trust as provided in *RCW 11.98.040, or (c) the time of termination of the trust or the trustee's repudiation of the trust.

(2) Any action by an heir, legatee, or other interested party, to whom proper notice was given if required, against a personal representative for alleged breach of fiduciary duty must be brought prior to discharge of the personal representative.

(3) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of any statute of limita-

tions stated in subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under chapter 11.96 RCW, is not tolled if the unascertained or unborn heir, beneficiary, or class of persons, or minor, incompetent, or disabled person, or person identified in RCW 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

(4) Notwithstanding subsections (2) and (3) of this section, any cause of action against a trustee of an express trust, as provided for in subsection (1) of this section is not barred by the statute of limitations if it is brought within three years from January 1, 1985. In addition, any action as specified in subsection (2) of this section against the personal representative is not barred by this statute of limitations if it is brought within one year of January 1, 1985. [1985 c 31 § 7. Prior: 1984 c 149 § 47.]

***Reviser's note:** The reference to RCW 11.98.040 appears to be erroneous. RCW 11.98.040, recodified as RCW 11.98.160 as of January 1, 1985, does not relate to the discharge of trustees. The section governing that subject is RCW 11.98.041.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.070 Persons entitled to judicial proceedings for declaration of rights or legal relations. A trustor, grantor, personal representative, trustee, or other fiduciary, creditor, devisee, legatee, heir, or trust beneficiary interested in the administration of a trust, or the attorney general in the case of a charitable trust under RCW 11.110.120, or of the estate of a decedent, incompetent, or disabled person, may have a judicial proceeding for the declaration of rights or legal relations in respect to the trust or estate:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) To direct the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings;

(4) To confer upon the personal representatives or trustees any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

(5) To amend or conform the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(6) To amend or conform the will or the trust instrument in the manner required to qualify any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code as required by final regulations and rulings of the United States treasury department or internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(7) To resolve any other matter in this title referencing this judicial proceedings section.

The provisions of this chapter apply to disputes arising in connection with estates of incompetents or disabled persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede the otherwise applicable provisions and procedures of chapter 11.24, 11.28, 11.40, 11.52, 11.56, or 11.60 RCW with respect to any rights or legal obligations that are subject to those chapters. [1990 c 179 § 1; 1988 c 29 § 6; 1985 c 31 § 8. Prior: 1984 c 149 § 48.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.080 Hearing on petition—Form and content of notice. The court shall make an order fixing the time and place for hearing the petition. The court shall approve the form and content of the notice. Notice of hearing shall be signed by the clerk of the court. [1985 c 31 § 9. Prior: 1984 c 149 § 49.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.090 Power of clerk to fix dates of hearings—Exceptions. The clerk of each of the superior courts is authorized to fix the time of hearing of all applications, petitions and reports in probate and guardianship proceedings, except the time for hearings upon show cause orders and citations and except for the time of hearings set under RCW 11.96.080. The authority herein granted is in addition to the authority vested in the superior courts and superior court commissioners. [1985 c 31 § 10. Prior: 1984 c 149 § 51; 1965 c 145 § 11.02.060; prior: 1947 c 54 § 1; Rem. Supp. 1947 § 1590-a. Formerly RCW 11.02.060 and 11.16.110.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.100 Notice in judicial proceedings under Title 11 RCW requiring notice. Subject to RCW 11.96.110, in all judicial proceedings under Title 11 RCW that require notice, such notice shall be personally served or mailed to each trustee, personal representative, heir, beneficiary including devisees, legatees, and heirs, guardian ad litem, and person having an interest in the trust or estate whose name and address are known to the petitioner at least twenty days prior to the hearing on the petition, unless otherwise provided by statute or ordered by the court under RCW 11.96.080. Proof of such service or mailing shall be made by affidavit filed at or before the hearing. In addition, notice shall also be given to the attorney general if required under RCW 11.110.120. [1985 c 31 § 11. Prior: 1984 c 149 § 53.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.110 Notice constituting compliance with notice requirements of Title 11 RCW. Notwithstanding provisions of this chapter to the contrary, there is compliance with the notice requirements of Title 11 RCW for notice to the beneficiaries of, or persons interested in an estate or a trust, or to beneficiaries or remaindermen, including all living persons who may participate in the corpus or income of the trust or estate, if notice is given as follows:

(1) If an interest in an estate or trust has been given to persons who compose a certain class upon the happening of a certain event, notice shall be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice.

(2) If an interest in an estate or trust has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice shall be given to that living person.

(3) Except as otherwise provided in subsection (2) of this section, if an interest in an estate or trust has been given to a person, a class of persons, or both upon the happening of any future event, and the same interest or a share of such interest is to pass to another person, class of persons, or both, upon the happening of an additional future event, notice shall be given to the living person or persons who would take the interest upon the happening of the first event.

(4) Notice shall be given to persons who would not otherwise be entitled to notice by law if a conflict of interest involving the subject matter of the trust or estate proceeding is known to exist between a person to whom notice is given and a person to whom notice need not be given under Title 11 RCW.

Any action taken by the court is conclusive and binding upon each person receiving actual or constructive notice in the manner provided in this section. [1985 c 31 § 12. Prior: 1984 c 149 § 54.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.120 Special notice. Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150. [1985 c 31 § 13. Prior: 1984 c 149 § 55.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.130 Trial rules—Judgments. All issues of fact joined in probate or trust proceedings shall be tried in conformity with the requirements of the rules of practice in civil actions. The probate or trust proceeding may be commenced as a new action or as an action incidental to an existing probate or trust proceeding. Once commenced, the action may be consolidated with an existing probate or trust proceeding or converted to a separate action upon the motion of any party for good cause shown, or by the court on its own motion. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If no jury is demanded, the court shall try the issues joined, and sign and file its findings and decision in writing, as provided for in civil actions. Judgment on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions. [1985 c 31 § 14. Prior: 1984 c 149 § 56.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.140 Costs. Either the superior court or the court on appeal, may, in its discretion, order costs, including attorneys fees, to be paid by any party to the proceedings or out of the assets of the estate, as justice may require. [1985 c 31 § 15. Prior: 1984 c 149 § 57.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.150 Execution upon trust income or vested remainder—Permitted, when. Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman. [1985 c 31 § 16. Prior: 1955 c 33 § 30.30.120; prior: 1951 c 226 § 1. Formerly RCW 30.30.120.]

11.96.160 Appellate review. Any interested party may seek appellate review of any final order, judgment, or decree of the court, and such review shall be in the manner and way provided by law for appeals in civil actions. [1988 c 202 § 19; 1985 c 31 § 17. Prior: 1971 c 81 § 53; 1965 c 145 § 11.96.010; prior: 1917 c 156 § 221; RRS § 1591. Formerly RCW 11.96.010 and 11.16.040.]

Rules of court: Rules of Appellate Procedure.

Severability—1988 c 202: See note following RCW 2.24.050.

11.96.170 Nonjudicial resolution of disputes—Written agreement—Appointment of special representative—Qualifications—Filing of agreement or memorandum—Notice—Objections. (1) If, as to the matter in dispute, the trustor, grantor, all parties beneficially interested in the estate or trust with respect to such matter, and any current fiduciary of such estate or trust, who are also included in RCW 11.96.070 and who are entitled to notice under RCW 11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or any other matter in Title 11 RCW referencing this nonjudicial resolution procedure, then the agreement shall be evidenced by a written agreement executed by all necessary persons as provided in this section. Those persons may reach an agreement concerning a matter in RCW 11.96.070(4) as long as those persons, rather than the court, determine that the powers to be conferred are not inconsistent with the provisions or purposes of the will or trust.

(2) If necessary, the personal representative or trustee may petition the court for the appointment of a special representative to represent a person interested in the estate or trust who is a minor, incompetent, disabled, or who is yet unborn or unascertained, or a person whose identity or address is unknown. The special representative has authority to enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. Those entitled to receive notice for persons or beneficiaries described in RCW 11.96.110 may enter into a binding agreement on behalf of such persons or beneficiaries.

(3) The special representative shall be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative shall have no interest in any affected estate or trust, and shall not be related to any personal representative, trustee, beneficiary, or other person interested in the estate or trust. The special representative is entitled to reasonable compensation for services which shall be paid from the principal of the estate or trust whose beneficiaries are represented. Upon execution of the written agreement, the special representative shall be discharged of any further responsibility with respect to the estate or trust.

(4) The written agreement or a memorandum summarizing the provisions of the written agreement may, at the option of any person interested in the estate or trust, be filed with the court having jurisdiction over the estate or trust. The person filing the agreement or memorandum shall within five days thereof mail a copy of the agreement and a notice of the filing to each person interested in the estate or trust whose address is known. Notice shall be in substantially the following form:

CAPTION OF CASE	NOTICE OF FILING OF AGREEMENT OR MEMORANDUM OF AGREEMENT

Notice is hereby given that the attached document was filed by the undersigned in the above entitled court on the . . . . . day of . . . . . ., 19. . . Unless you file a petition objecting to the agreement within 30 days of the above specified date the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust.

If you file and serve a petition within the period specified, you should ask the court to fix a time and place for the hearing on the petition and provide for at least a ten days' notice to all persons interested in the estate or trust.

DATED this . . . . . day of . . . . . ., 19. . .

. . . . . .
(Party to the agreement)

(5) Unless a person interested in the estate or trust files a petition objecting to the agreement within thirty days of the filing of the agreement or the memorandum, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust. If all persons interested in the estate or trust waive the notice required by this section, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust effective upon the date of filing. [1988 c 29 § 7; 1985 c 31 § 18. Prior: 1984 c 149 § 61.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Dispute resolution procedures applicable to consolidation of trusts: RCW 11.98.080.
determination of recipient of life insurance or retirement proceeds: RCW 11.98.170.
trust gift distribution: Chapter 11.108 RCW.

11.96.180 Appointment of guardian ad litem. (1) The court, upon its own motion or on request of a person interested in the trust or estate, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, or person whose identity and address are unknown, or a designated class of persons who are not ascertained or are not in being. When not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) For the purposes of this section, a trustee is a person interested in the trust and a personal representative is a person interested in an estate.

(3) The court appointed guardian ad litem supersedes the special representative if so provided in the court order.

(4) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and 11.96.110. [1985 c 31 § 19. Prior: 1984 c 149 § 62.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.900 Purpose—1985 c 31. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 31 § 1.]

11.96.901 Severability—1985 c 31. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 31 § 20.]

11.96.902 Short title—Washington trust act of 1984. See RCW 11.02.900.

11.96.903 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. See RCW 11.02.901.

Chapter 11.97
EFFECT OF TRUST INSTRUMENT

Sections

11.97.010 Power of trustor—Trust provisions control. The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104 RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment. [1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.97.900 Application of chapter. This chapter applies to the provisions of chapters 11.95, 11.98, 11.100, and 11.104 RCW and to RCW 11.106.020. [1985 c 30 § 39. Prior: 1984 c 149 § 65.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.98
TRUSTS

Sections

Assignment for the benefit of creditors: Chapter 7.08 RCW.

Assignments to trustees, priority of wages: RCW 49.56.010.

Banks and trust companies: Title 30 RCW.

Cemeteries
endowment and nonendowment care: Chapter 68.40 RCW.
endowment care fund: Chapter 68.44 RCW.

Certificate conferring trust powers on bank, fee: RCW 30.08.095.

Conveyances and encumbrances of realty when held in trust: RCW 64.04.010.

Corporate
powers of trust companies, bond liability, securities, etc.: RCW 30.08.150 through 30.08.170.
seals, effect of absence from instrument: RCW 64.04.105.

Corporations
articles to state if trust company: RCW 30.08.020.
sole, property held in trust: RCW 24.12.030.

Costs against trustees, civil actions: RCW 4.84.150.

Employee benefit plans, trusts, duration, etc.: Chapter 49.64 RCW.

Employees' benefit deductions from wages are trust funds: RCW 49.52.010.

Execution against property in trustee's hands: RCW 6.17.110.

Fiduciary bonds: RCW 48.28.020.

Gifts for benefit of trust: RCW 11.12.250.

Guardianship: Chapters 11.88, 11.92, 73.36 RCW.

Husband and wife, property rights and liabilities: Chapter 26.16 RCW.

Insurance
deposits held in trust: RCW 48.16.020, 48.16.070.
equipment trust certificates: RCW 48.13.100.
investment in trustees' obligations: RCW 48.13.090.
trustee group life insurance: RCW 48.24.070.

Investment of trust funds: Chapter 11.100 RCW, RCW 30.24.080.

Investment of trust funds in certain federally secured obligations: RCW 39.60.010.

Loan agencies: Title 31 RCW.

Loans to officers of trust corporation from trust funds prohibited: RCW 30.12.120.

Mandamus: Chapter 7.16 RCW.

Massachusetts trusts: Chapter 23.90 RCW.

Mortgages and trust receipts: Title 61 RCW.

Mutual savings banks: Title 32 RCW.

National bank may do trust business, state regulations: RCW 30.08.110, 30.08.120.

Nontestamentary nature of certain trust provisions: RCW 11.02.090.

Partnerships: Title 25 RCW.

Personal property: Title 63 RCW.

Pleadings, setoff against beneficiary or trustee of trust estate: RCW 4.32.120, 4.32.140.

Powers of appointment, powers in trust: Chapter 11.95 RCW.

Private seals abolished: RCW 64.04.090.

Proceedings to impeach: RCW 42.04.040.

Prohibition: Chapter 7.16 RCW.

Property taxes
exemptions: Chapter 84.36 RCW.
generally: Title 84 RCW.

Prudent person rule: Chapter 11.100 RCW.

Recording, county auditor's duties: Chapter 65.04 RCW.

Recording and publication: Title 65 RCW.

Registration of land titles
assurance fund not liable for breach by trustee: RCW 65.12.700.
encumbrances by trust deeds: RCW 65.12.420 through 65.12.450.
fee for transfer in trust: RCW 65.12.790.
transfers between trustees: RCW 65.12.490.
transfers in trust: RCW 65.12.480.
trustee may register land: RCW 65.12.500.
trustees and receivers: RCW 65.12.600.

Resulting state bank, provisions when not exercising trust powers: RCW 30.49.100.

Retail sales tax, "buyer" includes trust, business trust, etc.: RCW 82.08.010.

Savings and loan associations: Title 33 RCW.

Savings banks
limitation on deposits: RCW 32.12.010.
not to locate in same room with trust company: RCW 32.04.030.

State depositaries: Chapter 43.85 RCW.

Statute of frauds: Chapter 19.36 RCW.

Trust business to be kept separate: RCW 30.04.240.

Trust companies
capital requirements: RCW 30.08.010.
limitation to act as executor or administrator: RCW 11.36.010.

Trust company
as legal representative, advertising: RCW 30.04.260, 30.12.130.
defined: RCW 30.04.010.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

Trustee for crop credit notes: RCW 31.16.170 through 31.16.250, 31.16.270, 31.16.280.

Trustees' accounting act: Chapter 11.106 RCW.

Trusts and monopolies: State Constitution Art. 12 § 22.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

Uniform
common trust fund act: Chapter 11.102 RCW.
transfers to minors act: Chapter 11.114 RCW.
unclaimed property act: Chapter 63.29 RCW.

Use tax, "purchaser" includes trust, business trust, etc.: RCW 82.12.010.

Wills, generally: Chapter 11.12 RCW.

Witnesses, competency in actions involving fiduciaries: RCW 5.60.030.

11.98.009 Application of chapter. Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, trusts created by the judgment or decree of a court not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to chapter 30.22 RCW, unless any such trust which is created in writing incorporates this chapter in whole or in part. [1985 c 30 § 40. Prior: 1984 c 149 § 67; 1983 c 3 § 49; 1959 c 124 § 1. Formerly RCW 30.99.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.016 Exercise of powers by co-trustees. (1) Any power vested in three or more trustees jointly may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power is liable to the beneficiaries or to others for the consequences of such exercise; nor is a dissenting trustee liable for the consequences of an act in which that trustee joins at the direction of the majority of the trustees, if that trustee expressed his or her dissent in writing to each of the co-trustees at or before the time of such joinder.

(2) Where two or more trustees are appointed to execute a trust and one or more of them for any reason does not accept the appointment or having accepted ceases to be a trustee, the survivor or survivors shall execute the trust and shall succeed to all the powers, duties and discretionary authority given to the trustees jointly.

(3) An individual trustee, with a co-trustee's consent, may, by a signed, written instrument, delegate any power, duty, or authority as trustee to that co-trustee. This delegation is effective upon delivery of the instrument to that co-trustee and may be revoked at any time by delivery of a similar signed, written instrument to that co-trustee. However, if a power, duty, or authority is expressly conferred upon only one trustee, it shall not be delegated to a co-trustee. If that power, duty, or authority is expressly excluded from exercise by a trustee, it shall not be delegated to the excluded trustee.

(4) If one trustee gives written notice to all other co-trustees of an action that the trustee proposes be taken, then the failure of any co-trustee to deliver a written objection to the proposal to the trustee, at the trustee's then address of record and within fifteen days from the date the co-trustee actually receives the notice, constitutes formal approval by the co-trustee, unless the co-trustee had previously given written notice that was unrevoked at the time of the trustee's notice, to that trustee that this fifteen-day notice provision is inoperative.

(5) As to any effective delegation made under subsection (3) of this section, a co-trustee has no liability for failure to participate in the administration of the trust.

Nothing in this section, however, otherwise excuses a co-trustee from liability for failure to participate in the administration of the trust and nothing in this section, including subsection (3) of this section, excuses a co-trustee from liability for the failure to attempt to prevent a breach of trust. [1985 c 30 § 41. Prior: 1984 c 149 § 68; 1959 c 124 § 3. Formerly RCW 30.99.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.019 Relinquishment of powers by trustee. Any trustee may, by written instrument delivered to any then acting co-trustee and to the current adult income beneficiaries of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it. [1985 c 30 § 42. Prior: 1984 c 149 § 69.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.029 Resignation of trustee. Any trustee may resign, without judicial proceedings, by a writing signed by the trustee and filed with the trust records, to be effective upon the trustee's discharge as provided in RCW 11.98.041. [1989 c 10 § 3. Prior: 1985 c 30 § 43; prior: 1959 c 124 § 4. Formerly RCW 30.99.040.]

Intent—1989 c 10 § 3: "It is the intent of the legislature that RCW 11.98.029 be restored to full force and effect." [1989 c 10 § 2.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.039 Nonjudicial change of trustee—Notice—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to all adult income beneficiaries of the trust and to all known and identifiable adults for whom the income of the trust is being accumulated. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in *RCW 11.98.040.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, the beneficiaries and the then-acting trustee, if any, of a trust may agree for the nonjudicial change of the trustee under RCW 11.96.170. The trustee, or any beneficiary if there is no then-acting trustee, shall give written notice of the proposed change in trustee to every beneficiary or special representative, and to the trustor if alive. The notice shall: (a) State the name and mailing address of the trustee or the beneficiary giving the notice; (b) include a copy of the governing instrument; (c) state the name and mailing address of the successor trustee; and (d) include a copy of the proposed successor trustee's agreement to serve as trustee. The notice shall advise the recipient of the right to petition for a judicial appointment or change in trustee as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed change in trustee may be indicated. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) Any beneficiary of a trust, the trustor if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee under the procedures provided in chapter 11.96 RCW (a) whenever the office of trustee becomes vacant, (b) upon filing of a petition of resignation by a trustee, (c) upon the giving of notice of the change in trustee as referred to in subsection (1) or (2) of this section, or (d) for any other reasonable cause.

(4) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section. [1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

***Reviser's note:** The reference to RCW 11.98.040 appears to be erroneous. RCW 11.98.040, recodified as RCW 11.98.160 as of January 1, 1985, does not relate to the discharge of trustees. The section governing that subject is RCW 11.98.041. (See reference to RCW 11.98.041 in subsection (2) of the section.)

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.041 Change of trustee—Discharge of outgoing trustee, when. Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee shall be discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under RCW 11.98.039(3) regarding the appointment or change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(3) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require. [1985 c 30 § 141.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.045 Criteria for transfer of trust assets or administration. (1) A trustee may transfer trust assets to a trustee in another jurisdiction or may transfer the place of administration of a trust to another jurisdiction if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust; and

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section, RCW 11.98.051, or 11.98.055 shall not be construed to be doing a "trust business" as described in RCW 30.08.150(9). [1985 c 30 § 45. Prior: 1984 c 149 § 74.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (1) The trustee may transfer trust assets or the place of administration in accordance with RCW 11.96.170. In addition, the trustee shall give written notice to those persons entitled to notice as provided for under RCW 11.96.100 and 11.96.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW. The notice shall:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the assets or administration will be transferred together with evidence that the trustee has agreed to accept the assets or trust administration in the manner provided by law of the new place of administration. The notice shall also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the beneficiaries of the right to petition for judicial determination of the proposed transfer as provided in RCW 11.98.055; and

(g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the trustee receives written consent to the proposed transfer from all persons entitled to notice, the trustee may transfer the trust assets or place of administration as provided in the notice. Transfer in accordance with the notice is a full discharge of the trustee's duties in relation to all property referred to therein. Any person dealing with the trustee is entitled to rely on the authority of the trustee to act and is not obliged to inquire into the validity or propriety of the transfer. [1985 c 30 § 46. Prior: 1984 c 149 § 75.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.055 Judicial transfer of trust assets or administration. (1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of trust assets or transfer of the place of administration in accordance with chapter 11.96 RCW.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of trust assets or the place of trust administration on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property. [1985 c 30 § 47. Prior: 1984 c 149 § 76.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.060 Power of successor trustee. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee. [1985 c 30 § 48. Prior: 1959 c 124 § 6. Formerly RCW 30.99.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.065 Change in form of corporate trustee. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service. [1985 c 30 § 49. Prior: 1984 c 149 § 78.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.070 Power of trustee. A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by RCW 11.98.070(31);

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in RCW 83.110.020(2), and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(1) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except a trustee may not delegate all of the trustee's duties and responsibilities, and except that this employment does not relieve the trustee of liability for the discretionary acts of a person, which if done by the trustee, would result in liability to the trustee, or of the duty to select and retain a person with reasonable care;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Rely with acquittance on advice of counsel on questions of law; and

(34) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust. [1989 c 40 § 7; 1985 c 30 § 50. Prior: 1984 c 149 § 80; 1959 c 124 § 7. Formerly RCW 30.99.070.]

Construction—Severability—1989 c 40: See notes following RCW 83.110.010.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.080 Consolidation of trusts. (1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96.170.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in RCW 11.96.100 and 11.96.110 and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated

within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96.100 and 11.96.110, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under chapter 11.96 RCW. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(d) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) This section applies to all trusts whenever created.

(5) For powers of fiduciaries to divide trusts, see RCW 11.108.025. [1991 c 6 § 2; 1985 c 30 § 51. Prior: 1984 c 149 § 81.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.090 Nonliability of third persons without knowledge of breach. In the absence of knowledge of a breach of trust, no party dealing with a trustee is required to see to the application of any moneys or other properties delivered to the trustee. [1985 c 30 § 52. Prior: 1984 c 149 § 83; 1959 c 124 § 8. Formerly RCW 30.99.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.100 Nonliability for action or inaction based on lack of knowledge of events. When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, then a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered. [1985 c 30 § 53. Prior: 1984 c 149 § 84; 1959 c 124 § 9. Formerly RCW 30.99.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.110 Contract and tort liability. As used in this section, a trust includes a probate estate, and a trustee includes a personal representative. The words "trustee" and "as trustee" mean "personal representative" and "as personal representative" where this section is being construed in regard to personal representatives.

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: PROVIDED, HOWEVER, If the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a) the tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19.80 RCW excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights therein vested at time of the transfer, the trustee is personally liable only if he or she has in writing assumed that liability.

(3) In any such action against the trustee in the trustee's representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if the trustee had paid the plaintiff's claim.

(4) The trustee may also be held personally liable for any tort committed by him or her, or by his or her agents or employees in the course of their employments only if, and to the extent that, damages for the tort are not collectible from trust property as provided in and pursuant to subsection (1) of this section.

(5) The procedure for all actions provided in this section is as provided in chapter 11.96 RCW.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee. [1988 c 29 § 8; 1985 c 30 § 54. Prior: 1984 c 149 § 85; 1983 c 3 § 50; 1959 c 124 § 10. Formerly RCW 30.99.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.130 Violation of rule against perpetuities by instrument—Periods during which trust not invalid. If any provision of an instrument creating a trust, including the provisions of any further trust created, or any other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument violates the rule against perpetuities, neither such provision nor any other provisions of the trust, or such further trust or other disposition, is thereby rendered invalid during any of the following periods:

(1) The twenty-one years following the effective date of the instrument.

(2) The period measured by any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such life or lives.

(3) The period measured by any portion of any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such portion of such life or lives; and

(4) The twenty-one years following the expiration of the periods specified in (2) and (3) above. [1985 c 30 § 55. Prior: 1984 c 149 § 87; 1965 c 145 § 11.98.010; prior: 1959 c 146 § 1. Formerly RCW 11.98.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.140 Distribution of assets and vesting of interest during period trust not invalid. If, during any period in which an instrument creating a trust, as described in RCW 11.98.130, or any provision thereof, is not to be rendered invalid by the rule against perpetuities, any of the trust assets should by the terms of the instrument or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created through authority under such instrument, become distributable or any beneficial interest in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition. [1985 c 30 § 56. Prior: 1984 c 149 § 88; 1965 c 145 § 11.98.020; prior: 1959 c 146 § 2. Formerly RCW 11.98.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.150 Distribution of assets at expiration of period. If, at the expiration of any period in which an instrument creating a trust, as described in RCW 11.98.009, or any provision thereof, is not to be rendered invalid by the rule against perpetuities, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then the assets shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment. [1985 c 30 § 57. Prior: 1984 c 149 § 89; 1965 c 145 § 11.98.030; prior: 1959 c 146 § 3. Formerly RCW 11.98.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.160 Effective date of irrevocable inter vivos trust—Effective date of revocable inter vivos or testamentary trust. For the purposes of RCW 11.98.130 through 11.98.150 the effective date of an instrument purporting to create an irrevocable inter vivos trust is the date on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust is the date of the trustor's or testator's death. [1989 c 14 § 2; 1985 c 30 § 58. Prior: 1984 c 149 § 90; 1965 c 145 § 11.98.040; prior: 1959 c 146 § 4. Formerly RCW 11.98.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.170 Designation of trustee as beneficiary of life insurance policy or retirement plan—Determination of proper recipient of proceeds—Definitions—Beneficiary designations executed before January 1, 1985, not invalidated. (1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter 11.96 RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter 11.96 RCW.

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter 11.114 RCW or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the provisions of chapter 11.114 RCW or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to January 1, 1985, naming a trustee established by will or by trust agreement. [1991 c 193 § 29; 1985 c 30 § 59. Prior: 1984 c 149 § 91.]

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.900 Application of RCW 11.98.130 through 11.98.160. The provisions of RCW 11.98.130 through 11.98.160 are applicable to any instrument purporting to create a trust regardless of the date such instrument bears, unless it has been previously adjudicated in the courts of this state. [1985 c 30 § 60. Prior: 1984 c 149 § 93; 1971 ex.s. c 229 § 1; 1965 c 145 § 11.98.050; prior: 1959 c 146 § 5. Formerly RCW 11.98.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Effective date—1959 c 146: The effective date of 1959 c 146, herein reenacted by 1965 c 145 § 11.98.050, was midnight June 10, 1959, see preface 1959 session laws.

11.98.910 Severability—1959 c 124. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1985 c 30 § 61. Prior: 1959 c 124 § 11. Formerly RCW 30.99.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.920 Short title. This act shall be known as the "Washington Trust Act." [1985 c 30 § 62. Prior: 1959 c 124 § 12. Formerly RCW 30.99.910.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.99
CONSTRUCTION

Sections

11.99.010 Effective date of title. This title shall take effect and be in force on and after the first day of July, 1967; except that sections 11.44.055, 11.44.065, 11.44.070 and 11.44.080 shall take effect on July 1, 1965, and the repeal of the following acts or parts of acts as listed in section 11.99.015 shall also take effect on July 1, 1965, to wit: In subsection (10), section 1444, Code of 1881; in subsection (47), section 95, chapter 156, Laws of 1917; in subsection (48), section 1, chapter 23, Laws of 1919; in subsection (64), section 1, chapter 112, Laws of 1929; in subsection (66), section 123, chapter 180, Laws of 1935; in subsection (71), section 8, chapter 202, Laws of 1939; and in subsection (111), section 83.16.040, chapter 15, Laws of 1961. Except as above provided the procedures herein prescribed shall govern all proceedings in probate brought after the effective date of the title and, also, all further procedure and proceedings in probate then pending, except to the extent that in the opinion of the court their application in particular proceedings or part thereof would not be feasible or would work injustice, in which event the former procedure shall apply. [1965 c 145 § 11.99.010.]

11.99.013 Headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 145 § 11.99.013.]

11.99.015 Repeal. See 1965 c 145 § 11.99.015.

11.99.020 Savings clause—Rights not affected. No act done in any proceeding commenced before this title takes effect and no accrued right shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute in force before this title takes effect, such provisions shall remain in force and be deemed a part of this code with respect to such right. [1965 c 145 § 11.99.020.]

11.99.030 Severability—1965 c 145. If any provisions of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and, to this end, provisions of this title are declared to be severable. [1965 c 145 § 11.99.030.]

Chapter 11.100
INVESTMENT OF TRUST FUNDS

Sections

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.100.010 Provisions of chapter to control. Any corporation, association, or person handling or investing trust funds as a fiduciary shall be governed in the handling and investment of such funds as in this chapter specified. [1985 c 30 § 63. Prior: 1955 c 33 § 30.24.010; prior: 1947 c 100 § 1; Rem. Supp. 1947 § 3255-10a. Formerly RCW 30.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.015 Guardians, guardianships and funds are subject to chapter. In addition to other fiduciaries, a guardian of any estate is a fiduciary within the meaning of this chapter; and in addition to other trusts, a guardianship of any estate is a trust within the meaning of this chapter; and in addition to other trust funds, guardianship funds are trust funds within the meaning of this chapter. [1985 c 30 § 64. Prior: 1955 c 33 § 30.24.015; prior: 1951 c 218 § 1. Formerly RCW 30.24.015.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.020 Management of trust assets by fiduciary. (1) A fiduciary is authorized to acquire and retain every kind of property. In acquiring, investing, reinvesting, exchanging, selling and managing property for the benefit of another, a fiduciary, in determining the prudence of a particular investment, shall give due consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying such total asset management approach, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, and if the fiduciary has special skills or is named trustee on the basis of representations of special skills or expertise, the fiduciary is under a duty to use those skills.

(2) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a fiduciary in applying this total asset management approach:

(a) The probable income as well as the probable safety of their capital;

(b) Marketability of investments;

(c) Length of the term of the investments;

(d) Duration of the trust;

(e) Liquidity needs;

(f) Requirements of the beneficiary or beneficiaries;

(g) Other assets of the beneficiary or beneficiaries, including earning capacity; and

(h) Effect of investments in increasing or diminishing liability for taxes.

Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment specifically including but not by way of limitation, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion, and intelligence acquire for their own account. [1985 c 30 § 65. Prior: 1984 c 149 § 97; 1955 c 33 § 30.24.020; prior: 1947 c 100 § 2; Rem. Supp. 1947 § 3255-10b. Formerly RCW 30.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Endowment care funds to be invested in accordance with RCW 11.100.020: RCW 68.44.030.

11.100.023 Authority of fiduciary to invest in certain enterprises. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly therein or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in such enterprises. The aggregate amount of investments held by a fiduciary under the authority of this section valued at cost shall not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after any such investment is made. Any investment which would have been authorized by this section if in force at the time the investment was made is hereby authorized. [1985 c 30 § 66. Prior: 1984 c 149 § 98.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Securities in default ineligible for investment: RCW 30.24.080.

11.100.025 Marital deduction interests. Notwithstanding RCW 11.98.070(21)(a), 11.100.060, or any other statutory provisions to the contrary, with respect to trusts which require by their own terms or by operation of law that all income be paid at least annually to the spouse of the trust's creator, which do not provide that on the termination of the income interest that the entire then remaining trust estate be paid to the estate of the spouse of the trust's creator, and for which a federal estate or gift tax marital deduction is claimed, any investment in or retention of unproductive property is subject to a power in the spouse of the trust's creator to require either that any such asset be made productive, or that it be converted to productive assets within a reasonable period of time unless the instrument creating the interest provides otherwise. [1985 c 30 § 67. Prior: 1984 c 149 § 99.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Securities in default ineligible for investment: RCW 30.24.080.

11.100.030 Investment in savings accounts—Requirements. A corporation doing a trust business may invest trust funds in savings accounts with itself to the extent that deposits are insured by an agency of the federal government. Additional trust funds may be so invested by the corporation only if it first sets aside under the control of its trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited. [1985 c 30 § 68. Prior: 1984 c 149 § 101; 1967 c 133 § 3; 1955 c 33 § 30.24.030; prior: 1947 c 100 § 3; Rem. Supp. 1947 § 3255-10c. Formerly RCW 30.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.035 Investments in securities of certain investment trusts. (1) Within the standards of judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees and other fiduciaries, whether individual or corporate, are authorized to acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940 as now or hereafter amended.

(2) Within the limitations of subsection (1) of this section, whenever the trust instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the trustee may invest in and hold such obligations either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(a) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian. [1989 c 97 § 1; 1985 c 30 § 69. Prior: 1955 c 33 § 30.24.035; prior: 1951 c 132 § 1. Formerly RCW 30.24.035.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.037 Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception. Funds held by a bank or trust company in a fiduciary capacity awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. These funds, including managing agency accounts, may, unless prohibited by the instrument creating the trust or by other statutes of this state, be deposited in the commercial or savings or other department of the bank or trust company, only if the bank or trust company first sets aside under control of the trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited, but such security shall not be required to the extent that the

funds so deposited are insured by an agency of the federal government. [1985 c 30 § 70. Prior: 1984 c 149 § 104; 1967 c 133 § 4. Formerly RCW 30.24.037.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.040 Court may permit deviation from terms of trust instrument. Nothing contained in this chapter shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property. [1985 c 30 § 71. Prior: 1955 c 33 § 30.24.040; prior: 1947 c 100 § 4; Rem. Supp. 1947 § 3255-10d. Formerly RCW 30.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.050 Scope of chapter. The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985. [1985 c 30 § 72. Prior: 1984 c 149 § 107; 1955 c 33 § 30.24.050; prior: 1947 c 100 § 5; Rem. Supp. 1947 § 3255-10e. Formerly RCW 30.24.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.060 Fiduciary may hold and retain trust property—Investments—Liability. Subject to express provisions to the contrary in the trust instrument, any fiduciary may hold and retain any real or personal property received into or acquired by the trust from any source. Except as to trust property acquired for consideration, a fiduciary may hold and retain any such property without need for diversification as to kinds or amount and whether or not the property is income producing.

Any fiduciary may invest funds held in trust under an instrument creating the trust in any manner and in any investment or in any class of investments authorized by the instrument.

The investments described in this section are permissible even though the securities or other property are not permitted under other provisions of this chapter, and even though the securities may be securities issued by the corporation that is the fiduciary.

A fiduciary is not liable for any loss incurred with respect to any investment held under the authority of or pursuant to this section if that investment was permitted when received or when the investment was made by the fiduciary, and if the fiduciary exercises due care and prudence in the disposition or retention of any such investment. [1985 c 30 § 73. Prior: 1984 c 149 § 108.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.070 Meaning of terms in trust instrument. The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of RCW 11.100.020. [1985 c 30 § 74. Prior: 1984 c 149 § 110; 1955 c 33 § 30.24.070; prior: 1947 c 100 § 7; 1941 c 41 § 13; Rem. Supp. 1947 § 3255-13. Formerly RCW 30.24.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.090 Dealings with self or affiliate. Unless the instrument creating the trust expressly provides to the contrary, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12). [1985 c 30 § 75. Prior: 1984 c 149 § 111; 1955 c 33 § 30.24.090; prior: 1947 c 100 § 9; 1941 c 41 § 17; Rem. Supp. 1947 § 3255-17. Formerly RCW 30.24.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.120 Use of trust funds for life insurance. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to use trust funds to acquire life insurance upon the life of any beneficiary or upon the life of another in whose life such beneficiary has an insurable interest. [1985 c 30 § 76. Prior: 1984 c 149 § 112; 1973 1st ex.s. c 89 § 1. Formerly RCW 30.24.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Insurable interest, guardian, trustee or other fiduciary: RCW 48.18.030(3)(d).

11.100.130 Person to whom power or authority to direct or control acts of trustee or investments of a trust is conferred deemed a fiduciary—Liability. Whenever power or authority to direct or control the acts of a trustee or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of said trust and to the designated trustee to the same extent as if he were a designated trustee in relation to the exercise or nonexercise of such power or authority. [1985 c 30 § 77. Prior: 1973 1st ex.s. c 89 § 2. Formerly RCW 30.24.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.140 Notice and procedure for nonroutine transactions. (1) A trustee shall not enter into a significant nonroutine transaction in the absence of a compelling circumstance without:

(a) Providing the written notice called for by subsection (4) of this section; and

(b) If the significant nonroutine transaction is of the type described in subsection (2)(a) of this section, obtaining an independent appraisal, or selling in an open-market transaction.

(2) A "significant nonroutine transaction" for the purpose of this section is defined as any of the following:

(a) Any sale, option, lease, or other agreement, binding for a period of ten years or more, dealing with any interest in real estate other than real estate purchased by the trustee or a vendor's interest in a real estate contract, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(b) The sale of any item or items of tangible personal property, including a sale of precious metals or investment gems other than precious metals or investment gems purchased by the trustee, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(c) The sale of shares of stock in a corporation whose stock is not traded on the open market, if the stock in question constitutes more than twenty-five percent of the corporation's outstanding shares; or

(d) The sale of shares of stock in any corporation where the stock to be sold constitutes a controlling interest, or would cause the trust to no longer own a controlling interest, in the corporation.

(3) A "compelling circumstance" for the purpose of this section is defined as a condition, fact, or event that the trustee believes necessitates action without compliance with this section in order to avoid immediate and significant detriment to the trust. If faced with a compelling circumstance, the trustee shall give the notice called for in subsection (4) of this section and may thereafter enter into the significant nonroutine transaction without waiting for the expiration of the twenty-day period.

(4) The written notice required by this section shall set forth such material facts as necessary to advise properly the recipient of the notice of the nature and terms of the intended transaction. This notice shall be given to the trustor, if living, to each person who is eighteen years or older and to whom income is presently payable or for whom income is presently being accumulated for distribution as income and for whom an address is known to the trustee, and to the attorney general if the trust is a charitable trust under RCW 11.110.020. The notice shall be mailed by United States certified mail, postage prepaid, return receipt requested, to the recipient's last-known address, or may be personally served, at least twenty days prior to the trustee entering into any binding agreements.

(5) The trustor, if living, or persons entitled to notice under this section may, by written instrument, waive any requirement imposed by this section.

(6) Except as required by this section for nonroutine transactions defined in subsection (2) of this section, a trustee shall not be required to notify beneficiaries of a trust of the trustee's intended action, to obtain an independent appraisal, or to sell in an open-market transaction.

(7) Any person dealing with a trustee may rely upon the trustee's written statement that the requirements of this section have been met for a particular transaction. If a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of this section have not been met.

(8) The requirements of this section, and any similar requirements imposed by prior case law, shall not apply to personal representatives or to those trusts excluded from the definition of express trusts under RCW 11.98.009. [1985 c 30 § 78. Prior: 1984 c 149 § 114.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.102
COMMON TRUST FUNDS

Sections

11.102.010 Funds authorized—Investment—Rules and regulations—"Affiliated" defined. Any bank or trust company qualified to act as fiduciary in this state, or in any other state if affiliated with a bank or trust company qualified to act as fiduciary in this state, may establish common trust funds for the purpose of furnishing investments to itself and its affiliated or related bank or trust company as fiduciary, or to itself and its affiliated or related bank or trust company, and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment: PROVIDED, That any bank or trust company qualified to act as fiduciary in the state of its charter, which is not a member of the federal reserve system, shall, in the operation of such common trust fund, comply with the rules and regulations as made from time to time by the supervisor of banking in the state where chartered and in Washington the supervisor is hereby authorized and empowered to make such rules and regulations as he may deem necessary and proper in the premises.

"Affiliated" as used in this section means two or more banks or trust companies:

(1) In which twenty-five percent or more of their voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by a holding company; or

(2) In which the election of a majority of the directors is controlled in any manner by a holding company. [1985 c 30 § 79. Prior: 1979 c 105 § 1; 1955 c 33 § 30.28.010; prior: 1943 c 55 § 1; Rem. Supp. 1943 § 3388. Formerly RCW 30.28.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.020 Accounting. Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. [1985 c 30 § 80. Prior: 1955 c 33 § 30.28.020; prior: 1943 c 55 § 2; Rem. Supp. 1943 § 3388-1. Formerly RCW 30.28.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.030 Applicability of chapter. This chapter shall apply to fiduciary relationships in existence on June 11, 1943, or thereafter established. [1985 c 30 § 81. Prior: 1955 c 33 § 30.28.030; prior: 1943 c 55 § 7; Rem. Supp. 1943 § 3388-6. Formerly RCW 30.28.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.040 Interpretation of chapter. This chapter shall be so interpreted and construed to effectuate its general purpose to make uniform the laws of those states which enact it. [1985 c 30 § 82. Prior: 1955 c 33 § 30.28.040; prior: 1943 c 55 § 3; Rem. Supp. 1943 § 3388-2. Formerly RCW 30.28.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.050 Short title. This chapter may be cited as the uniform common trust fund act. [1985 c 30 § 83. Prior: 1955 c 33 § 30.28.050; prior: 1943 c 55 § 4; Rem. Supp. 1943 § 3388-3. Formerly RCW 30.28.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.104
WASHINGTON PRINCIPAL AND INCOME ACT

Sections

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.104.010 Definitions. As used in this chapter:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income;

(2) "Inventory value" means the cost of property purchased by the trustee and the cost or adjusted basis for federal income tax purposes of other property at the time it became subject to the trust, but in the case of a trust asset that is included on any death tax return the trustee may, but need not, use the value finally determined for the purposes of the federal estate tax if applicable, otherwise for another estate or inheritance tax;

(3) "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal. [1985 c 30 § 84. Prior: 1984 c 149 § 116; 1971 c 74 § 1.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.020 Duty of trustee as to receipts and expenditures. (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(a) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter;

(b) In the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter; or

(c) If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which persons of prudence, discretion, and intelligence would act in the management of their own affairs.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation consistent with the instrument but that is contrary to a provision of this chapter. [1985 c 30 § 85. Prior: 1984 c 149 § 117; 1971 c 74 § 2.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.030 Income—Principal—Charges. (1) Income is the return in money or property derived from the use of principal, including:

(a) Rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) Interest on money lent, including sums received as consideration for the privilege of prepayment of principal

except as provided in RCW 11.104.070 on bond premiums and bond discounts;

(c) Income earned during administration of a decedent's estate as provided in RCW 11.104.050;

(d) Corporate distributions as provided in RCW 11.104.060;

(e) Increment in value on bonds or other obligations issued at a discount as provided in RCW 11.104.070;

(f) Receipts from business and farming operations as provided in RCW 11.104.080;

(g) Receipts from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(h) Receipts from other principal subject to depletion as provided in RCW 11.104.110; and

(i) Receipts from disposition of underproductive property as provided in RCW 11.104.120.

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman while the return on or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(a) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(b) Proceeds of property taken on eminent domain proceedings;

(c) Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in RCW 11.104.060;

(e) Receipts from the disposition of corporate securities, bonds, or other obligations for the payment of money as provided in RCW 11.104.070;

(f) Royalties and other receipts from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(g) Receipts from other principal subject to depletion as provided in RCW 11.104.110;

(h) Any profit resulting from any change in the form of principal except as provided in RCW 11.104.120 on underproductive property;

(i) Receipts from disposition of underproductive property as provided in RCW 11.104.120; and

(j) Any allowances for depreciation established under RCW 11.104.080 and 11.104.130(1)(b).

(3) After determining income and principal in accordance with the terms of the trust instrument or of this chapter, the trustee shall charge to income or principal expenses and other charges as provided in RCW 11.104.130. [1985 c 30 § 86. Prior: 1984 c 149 § 118; 1971 c 74 § 3.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.040 When right to income arises—Apportionment of income. (1) An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) Subject to subsection (2) (a) and (b) of this section, in the administration of a decedent's estate or of an asset becoming subject to a trust by reason of a will all receipts paid on or before the date of death of the testator are principal and all receipts paid after that date are income.

(a) Notwithstanding the foregoing, receipts due but not paid on or before the date of death of the testator are principal; and

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on or before the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

(3) In all other cases, any receipt from an income producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On the termination of an income beneficiary's income interest, if such interest was not subject to any discretion to withhold, accumulate, or distribute income to or for any other beneficiary, then income on hand but undistributed belongs to that income beneficiary or that beneficiary's estate, except that if the income beneficiary is the surviving spouse of the testator or grantor of the trust and the income interest otherwise qualifies for the marital deduction on any federal estate or gift tax return, then all accrued but undistributed income is subject to a testamentary general power of appointment in the surviving spouse, exercisable as provided in RCW 11.95.060 by specific reference to this statutory provision, to appoint the same to himself or herself, or to his or her estate. All undistributed income not disposed of under the foregoing provisions of this subsection shall be held and distributed as part of the next eventual interest or estate in accordance with the provisions of the will or trust relating to such next eventual interest or estate.

(5) Corporate distributions to stockholders shall be treated as due on the date fixed by the corporation for determination of stockholders of record entitled to distribution, or if no date is fixed, on the date of declaration of the distribution by the corporation. [1985 c 30 § 87. Prior: 1984 c 149 § 119; 1971 c 74 § 4.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.050 Income earned during administration of a decedent's estate. (1) Unless the will or the court otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest due at death, and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate, except that the principal shall be reimbursed from income for any increase in estate taxes due

to the use of administration expenses that were paid from principal as deductions for income tax purposes.

(2) Unless the will or the court otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trust under this chapter and distributed as follows:

(a) To beneficiaries of any specific bequest, legacy, or devise, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and appropriate portions of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration;

(b) Subject to (c) of this subsection, to all other beneficiaries, including trusts, the balance of the income less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, plus the balance of all income accrued since the death of the testator, and less the balance of all taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of the fair value, provided, that the amount of income earned before the date or dates of payment of any estate or inheritance tax shall be distributed to those beneficiaries in proportion to their interests immediately before the making of those payments; and

(c) Pecuniary bequests not in trust do not receive income, and, subject to the provisions of RCW 11.56.160, all such bequests, including those to the decedent's surviving spouse, are not allocated any share of the expenses identified in subsection (2)(b) of this section.

(3) Any income with respect to which the income taxes have been paid which is payable in whole or in part to one or more charitable or other tax exempt organizations, and for which an income tax charitable deduction was allowable, shall be allocated among the distributees in such manner that the diminution in such taxes resulting from the charitable deduction allowable will inure to the benefit of the charitable or tax exempt organization giving rise to the deduction.

(4) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust. [1985 c 30 § 88. Prior: 1984 c 149 § 120; 1971 c 74 § 5.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.060 Corporate distribution. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the stock became a part of the trust corpus or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(a) A call of shares;

(b) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1), (2), and (3) of this section all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3) of this section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets. [1985 c 30 § 89. Prior: 1984 c 149 § 121; 1971 c 74 § 6.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.070 Bond premium and discount. (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. The trustee shall not provide for amortization of bond premiums or for accumulation of discount except where the trust instrument provides otherwise. If the instrument provides for amortization of premiums or accumulation of discount, but not both, and is silent as to one, it is the duty of the trustee to amortize premiums and accumulate discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money bearing no fixed rate of interest or payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. Except as otherwise provided in RCW 11.104.040(4), the increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized

increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized. [1985 c 30 § 90. Prior: 1984 c 149 § 122; 1971 c 74 § 7.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.080 Trade, business and farming operations. If a trustee uses any part of the principal in the operation of a trade, business or farming operation, the proceeds and losses of the business shall be allocated in accordance with what is reasonable and equitable in view of the interest of those entitled to income as well as those entitled to principal, and in view of the manner in which persons of prudence, discretion, and intelligence would act in the management of their own affairs in accordance with RCW 11.104.020. The operation of real estate for rent is considered a business. [1985 c 30 § 91. Prior: 1984 c 149 § 123; 1971 c 74 § 8.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.090 Disposition of receipts from natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income;

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income; and

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. Receipts shall be allocated to income or apportioned between income and principal at the discretion of the trustee, but in no event may principal be allocated more than that portion of the gross receipts that is deductible for federal income tax purposes during that year. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(2) If a trustee, on January 1, 1972, held an item of depletable property of a type specified in this section, the trustee shall allocate receipts from the property in the manner used before January 1, 1972, but as to all depletable property acquired after January 1, 1972 by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses. [1985 c 30 § 92. Prior: 1984 c 149 § 124; 1971 c 74 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.100 Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with RCW 11.104.020. [1971 c 74 § 10.]

11.104.110 Other property subject to depletion. Except as provided in RCW 11.104.090 and 11.104.100, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of five percent per year of its inventory value, are income, and the balance is principal. [1971 c 74 § 11.]

11.104.120 Underproductive property—Definition. (1) Except as provided in subsection (5) of this section, a portion of the net proceeds of sale of any part of principal which is underproductive shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received, less expenses, including any capital gains tax incurred in disposition, and less any carrying charges paid while the property was underproductive.

(2) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was underproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any use of the property by the income beneficiary, is income, and the balance is principal.

(3) Except as otherwise provided in RCW 11.104.040(4), an income beneficiary is entitled to delayed income under this section as if it accrued from day to day during the time he was a beneficiary.

(4) If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages (for example, realty acquired by or in lieu of foreclosure), the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

(5) This section does not apply to underproductive property that the trustee is authorized to retain by the terms

of the controlling document or by law; that is received into or acquired by the trust from any source, except property which is purchased by the fiduciary in administering the trust; the retention of which has been authorized in writing by the income beneficiaries; or the retention of which would be considered proper under the standard set forth in RCW 11.100.020.

(6) As used in this section, the term "underproductive property" refers to any property that has not produced an average net income of at least one percent per year (simple interest) of its inventory value for more than a year (including as income the value of any use of the property by the income beneficiary). [1985 c 30 § 93. Prior: 1984 c 149 § 125; 1971 c 74 § 12.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.130 Charges against income and principal. (1) The following charges shall be made against income:

(a) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(b) If the trustee deems the same to be appropriate under the standards in RCW 11.104.020(1)(c), a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles; no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on January 1, 1972 for which the trustee is not then making an allowance for depreciation;

(c) One-half of court costs, attorney's fees, and other fees on periodic accountings, unless the court directs otherwise;

(d) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) One-half of the trustee's regular compensation, whether based on a percentage of principal or income;

(f) All expenses reasonably incurred for current management of principal and application of income; and

(g) Any tax levied upon receipts allocated to income under this chapter or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) Trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e) of this section, special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) Charges not provided for in subsection (1) of this section, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness (including a mortgage amortized by periodic payments of principal), expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but, a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection (1)(b) of this section and by RCW 11.104.080;

(d) Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the tax authority; and

(e) If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest, whether on account of direct or indirect borrowing for the purpose of paying those taxes, and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under RCW 11.104.040. [1985 c 30 § 94. Prior: 1984 c 149 § 126; 1971 c 74 § 13.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.900 Application of chapter. Except as specifically provided in the trust instrument or the will or in this chapter, this chapter shall apply to any receipt or expense received or incurred on or after January 1, 1972 by the estate of any decedent dying on or after January 1, 1972 or by any trust whether established before or after January 1, 1972 and whether the asset involved was acquired by the trustee before or after January 1, 1972. [1971 c 74 § 14.]

11.104.901 Application of RCW 11.104.010 through 11.104.130 as of January 1, 1985. RCW 11.104.010 through 11.104.090, 11.104.120, and 11.104.130, as amended and reenacted in 1985, shall apply as of January 1, 1985. [1985 c 30 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.104.910 Short title. This chapter may be cited as the Washington Principal and Income Act. [1971 c 74 § 15.]

11.104.920 Severability—1971 c 74. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application and

to this end the provisions of this act are severable. [1971 c 74 § 16.]

11.104.930 Section headings not part of law. Section headings, as found in this 1971 amendatory act do not constitute any part of the law. [1971 c 74 § 18.]

11.104.940 Effective date—1971 c 74. This act shall take effect on January 1, 1972. [1971 c 74 § 19.]

Chapter 11.106
TRUSTEES' ACCOUNTING ACT

Sections

11.106.010 Scope of chapter—Exceptions. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives. [1985 c 30 § 95. Prior: 1984 c 149 § 128; 1955 c 33 § 30.30.010; prior: 1951 c 226 § 10. Formerly RCW 30.30.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.020 Trustee's annual statement. The trustee or trustees appointed by any will, deed, or agreement executed shall mail or deliver at least annually to each adult income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary shall furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides. [1985 c 30 § 96. Prior: 1984 c 149 § 129; 1955 c 33 § 30.30.020; prior: 1951 c 226 § 2. Formerly RCW 30.30.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.106.030 Intermediate and final accounts—Contents—Filing. In addition to the statement required by RCW 11.106.020 any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

(1) The period covered by the account;

(2) The total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;

(3) An itemized statement of all principal funds received and disbursed during such period;

(4) An itemized statement of all income received and disbursed during such period, unless waived;

(5) The balance of such principal and income remaining at the close of such period and how invested;

(6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;

(7) A description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

After the time for termination of the trust has arrived, the trustee or trustees may also file a final account in similar manner. [1985 c 30 § 97. Prior: 1984 c 149 § 130; 1955 c 33 § 30.30.030; prior: 1951 c 226 § 3. Formerly RCW 30.30.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.040 Account—Court may require—Petition. Upon the petition under chapter 11.96 RCW of any settlor or of any beneficiary of such a trust after due notice as provided in chapter 11.96 RCW to the trustee the superior court in the county where the trustee or one of the trustees resides may direct the trustee or trustees to file in the court an account at any time after one year from the day on which such a report was last filed, or if none, then after one year from the inception of the trust. [1985 c 30 § 98. Prior: 1984 c 149 § 131; 1955 c 33 § 30.30.040; prior: 1951 c 226 § 4. Formerly RCW 30.30.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.050 Account filed—Return day—Notice. When any account has been filed pursuant to RCW 11.106.030 or 11.106.040, the clerk of the court where filed shall fix a return day therefor as provided in RCW 11.96.090 and issue a notice. The notice shall state the time and place for the return date, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle the account, and that any objections or exceptions to the account must be filed with the clerk of the court on or before the return date. The notice shall be given as provided for notices under

RCW 11.96.100 or 11.96.110. [1985 c 30 § 99. Prior: 1984 c 149 § 132; 1955 c 33 § 30.30.050; prior: 1951 c 226 § 5. Formerly RCW 30.30.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.060 Account filed—Objections—Appointment of guardians ad litem—Representatives. Upon or before the return date any beneficiary of the trust may file the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth in the account. The court shall appoint guardians ad litem as provided in RCW 11.96.180 and the court may allow representatives to be appointed under RCW 11.96.110 and 11.96.170 to represent the persons listed in those sections. [1985 c 30 § 100. Prior: 1984 c 149 § 133; 1977 ex.s. c 80 § 31; 1955 c 33 § 30.30.060; prior: 1951 c 226 § 6. Formerly RCW 30.30.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

11.106.070 Court to determine accuracy, validity—Decree. Upon the return date or at some later date fixed by the court if so requested by one or more of the parties, the court without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth in the account including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the account or any part of it, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust. [1985 c 30 § 101. Prior: 1984 c 149 § 134; 1955 c 33 § 30.30.070; prior: 1951 c 226 § 7. Formerly RCW 30.30.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.080 Effect of decree. The decree rendered under RCW 11.106.070 shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal under RCW 11.106.090. [1985 c 30 § 102. Prior: 1984 c 149 § 135; 1955 c 33 § 30.30.080; prior: 1951 c 226 § 8. Formerly RCW 30.30.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.090 Appeal from decree. The decree rendered under RCW 11.106.070 shall be a final order from which any party in interest may appeal as in civil actions to the supreme court or the court of appeals of the state of Washington. [1985 c 30 § 103. Prior: 1984 c 149 § 136; 1971 c 81 § 80; 1955 c 33 § 30.30.090; prior: 1951 c 226 § 9. Formerly RCW 30.30.090.]

Rules of court: Method of appellate review superseded by RAP 2.2(a)(3), 18.22.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.100 Waiver of accounting by beneficiary. Any adult beneficiary entitled to an accounting under either RCW 11.106.020 or 11.106.030 may waive such an accounting by a separate instrument delivered to the trustee. [1985 c 30 § 104. Prior: 1984 c 149 § 137; 1955 c 33 § 30.30.100; prior: 1951 c 226 § 11. Formerly RCW 30.30.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.110 Modification under chapter 11.97 RCW—How constituted. This chapter is declared to be of similar import to the uniform trustees' accounting act. Any modification under chapter 11.97 RCW, including waiver, of the requirements of this chapter in any will, deed, or agreement heretofore or hereafter executed shall be given effect whether the waiver refers to the uniform trustees' accounting act by name or other reference or to any other act of like or similar import. [1985 c 30 § 105. Prior: 1984 c 149 § 138; 1955 c 33 § 30.30.110; prior: 1951 c 226 § 12. Formerly RCW 30.30.110.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.108
TRUST GIFT DISTRIBUTION

Sections

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

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in

terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) The term "marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the internal revenue code.

(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction.

(5) The term "governing instrument" includes a will and codicils, irrevocable, and revocable trusts.

(6) "Fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) References to the "internal revenue code" are to the United States internal revenue code of 1986, as in effect on June 7, 1990.

(8) The term "gift" refers to all legacies, devises, and bequests made in a governing instrument. [1990 c 224 § 2; 1988 c 64 § 27; 1985 c 30 § 106. Prior: 1984 c 149 § 140.]

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.020 Marital deduction gift—Compliance with internal revenue code—Intent. If a governing instrument contains a marital deduction gift, the governing instrument, including any power, duty, or discretionary authority given to the fiduciary, shall be construed to comply with the marital deduction provisions of the internal revenue code and the regulations thereunder in order to conform to that intent. Whether the governing instrument contains a marital deduction gift depends upon the intent of the testator, grantor, or other transferor at the time the governing instrument is executed. If the testator, grantor, or other transferor has adequately evidenced an intention to make a marital deduction gift, the fiduciary shall not take any action or have any power that may impair that deduction, but this does not require the fiduciary to make the election under section 2056(b)(7) of the internal revenue code that is referred to in RCW 11.108.025. [1988 c 64 § 28; 1985 c 30 § 107. Prior: 1984 c 149 § 141.]

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.025 Election to qualify property for the marital deduction. Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) of the internal revenue code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the internal revenue code.

(2) The fiduciary making an election under section 2056(b)(7) or 2056A of the internal revenue code or making an allocation under section 2632 of the internal revenue code may benefit personally from the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) The fiduciary of a trust, if an election is made under section 2056(b)(7) or 2056A of the internal revenue code, if an allocation is made under section 2632 of the internal revenue code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, provided that the terms of the separate trusts which result are substantially identical to the terms of the trust before division, and provided further, in the case of a trust otherwise qualifying for the marital deduction under the internal revenue code and its regulations, that the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction. [1991 c 6 § 1; 1990 c 179 § 2; 1988 c 64 § 29.]

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

11.108.030 Pecuniary bequests—Valuation of assets if distribution other than money. (1) If a governing instrument authorizes the fiduciary to satisfy a pecuniary bequest in whole or in part by distribution of property other than money, the assets selected for that purpose shall be valued at their respective fair market values on the date or dates of distribution, unless the governing instrument expressly provides otherwise. If the governing instrument permits the fiduciary to value the assets selected for the distribution as of a date other than the date or dates of distribution, then, unless the governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of that gift as stated in, or determined by, the governing instrument.

(2) A marital deduction gift shall be satisfied only with assets that qualify for those deductions. [1985 c 30 § 108. Prior: 1984 c 149 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.040 Construction of certain marital deduction formula bequests. (1) If a testator, under the terms of a governing instrument executed prior to September 12, 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or fractional share of that testator's estate or a trust estate expressed in terms of one-half of that testator's federal adjusted gross estate, or by any other reference to the maximum estate tax marital deduction allowable under federal law without referring, either in that governing instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax marital deduction enacted as part of the economic

recovery tax act of 1981, such expression shall, unless subsection (2) or (3) of this section applies, be construed as referring to the unlimited federal estate tax marital deduction, and also as expressing such amount or fractional share, as the case may be, in terms of the minimum amount which will cause the least possible amount of federal estate tax to be payable as a result of the testator's death, taking into account other property passing to the surviving spouse that qualifies for the marital deduction, at the value at which it qualifies, and also taking into account all credits against the federal estate tax, but only to the extent that the use of these credits do not increase the death tax payable.

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

(a) The application of this subsection to the testator will not cause an increase in the federal estate taxes payable as a result of the testator's death over the amount of such taxes which would be payable if subsection (1) of this section applied; or

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of the testator's surviving spouse, unless such person or persons have entered into an agreement under the dispute resolution procedures in chapter 11.96 RCW; or

(c) The testator amended the governing instrument containing such expression after December 31, 1981, without amending such expression to refer expressly to the unlimited federal estate tax marital deduction.

(3) If the governing instrument contains language expressly stating that federal law of a particular time prior to January 1, 1982, is to govern the construction or interpretation of such expression, the expression shall be construed as referring to the marital deduction allowable under federal law in force and effect as of that time.

(4) If subsection (2) or (3) of this section applies to the testator, the expression shall not be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property. If subsection (1) of this section applies to the testator, any provision shall be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property, but only to the extent that such construction does not cause the amount or fractional share left to or for the benefit of the surviving spouse to be reduced below the amount that would pass under subsection (2) or (3) of this section, whichever is applicable.

(5) This section is effective with respect to testators dying after December 31, 1982. [1985 c 30 § 109. Prior: 1984 c 149 § 143.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.050 Marital deduction gift in trust. (1) If a governing instrument indicates the testator's intention to make a marital deduction gift in trust, in addition to the other provisions of this section, each of the following also applies to the trust; provided, however, that such provisions shall not apply to any trust which provides for the entire then remaining trust estate to be paid on the termination of the income interest to the estate of the spouse of the trust's creator, or to a charitable beneficiary, contributions to which are tax deductible for federal income tax purposes:

(a) The only income beneficiary of a marital deduction trust is the testator's surviving spouse;

(b) The income beneficiary is entitled to all of the trust income until the trust terminates;

(c) The trust income is payable to the income beneficiary not less frequently than annually; and

(d) Except in the case of a marital deduction gift in trust, described in subsection (2) of this section, or property that has or would otherwise have qualified for the marital deduction only as the result of an election under section 2056(b)(7) of the internal revenue code, upon termination of the trust, all of the remaining trust assets, including accrued or undistributed income, pass either to the income beneficiary or under the exercise of a general power of appointment granted to the income beneficiary in favor of the income beneficiary's estate or to any other person or entity in trust or outright. The general power of appointment is exercisable by the income beneficiary alone and in all events.

(2) If a governing instrument indicates the testator's intention to make a marital deduction gift in trust and the surviving spouse is not a citizen of the United States, subsection (1)(a), (b), and (c) of this section and each of the following shall apply to the trust:

(a) At least one trustee of the trust shall be an individual citizen of the United States or of a domestic corporation. However, any distribution from the trust must be approved by this trustee;

(b) The trust shall meet such requirements as the secretary of the treasury of the United States may by regulations prescribe to ensure collection of estate tax, under section 2056A(b) of the internal revenue code; and

(c) (a) and (b) of this subsection shall no longer apply to the trust if the surviving spouse becomes a citizen of the United States and (i) the surviving spouse is a resident of the United States at all times after the testator's death and before becoming a citizen, or (ii) no tax has been imposed on the trust under section 2056A(b)(1)(A) of the internal revenue code before the surviving spouse becomes a citizen, or (iii) the surviving spouse makes an election under section 2056A(b)(12)(C) of the internal revenue code regarding tax imposed on distributions from the trust before becoming a citizen.

(3) The exercise of the general power of appointment provided in this section shall be done only by the income beneficiary in the manner provided by RCW 11.95.060 by specifically referring to this section. [1990 c 179 § 3; 1985 c 30 § 110. Prior: 1984 c 149 § 144.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.060 Marital deduction gift—Survivorship requirement. If a governing instrument contains a marital deduction gift, whether outright or in trust and whether there is a specific reference to this section, any survivorship requirement expressed in the governing instrument in excess of six months, other than survival by a spouse of a common disaster resulting in the death of the decedent, does not apply to property passing under a marital deduction gift, and in addition, is limited to a six-month period beginning with the testator's death. [1989 c 35 § 1; 1985 c 30 § 111. Prior: 1984 c 149 § 145.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.900 Application of chapter. This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96 RCW apply to this chapter. [1985 c 30 § 112. Prior: 1984 c 149 § 146.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.110
CHARITABLE TRUSTS

Sections

11.110.010 Purpose of chapter. The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general with relation thereto. [1985 c 30 § 113. Prior: 1967 ex.s. c 53 § 1. Formerly RCW 19.10.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.020 Definitions. When used in this chapter, unless the context otherwise requires:

"Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

"Trustee" means (1) any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; and (2) a corporation formed for the administration of a charitable trust or holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes: PROVIDED, That the term "trustee" does not apply to (a) religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes: PROVIDED, That if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or (b) an educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts. [1985 c 30 § 114. Prior: 1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2. Formerly RCW 19.10.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.040 Information, documents, and reports are public records—Inspection—Publication. All information, documents, and reports filed with the attorney general under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: PROVIDED, That the attorney general shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The attorney general may publish, on a periodic or other basis, such information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with him or any other matters relevant to the administration and enforcement of this chapter. [1985 c 30 § 115. Prior: 1967 ex.s. c 53 § 4. Formerly RCW 19.10.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.050 Register of trustees—Establishment and maintenance. The attorney general shall establish and maintain a register of trustees as defined in RCW 11.110.020 and, to that end, shall conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources whatever information, copies of instruments, reports, and records are needed, for the establishment and maintenance of the register. [1985 c 30 § 116. Prior: 1984 c 149 § 149; 1967 ex.s. c 53 § 5. Formerly RCW 19.10.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.060 Instrument establishing trust, inventory of assets, tax exempt status or claim, tax return to be filed. Every trustee shall file with the attorney general within two months after receiving possession or control of the trust corpus a copy of the instrument establishing his title, powers, or duties, and an inventory of the assets of such charitable trust. In addition, trustees exempted from the provisions of RCW 11.110.070 by RCW 11.110.073 shall file with the attorney general a copy of the declaration of the tax-exempt status or other basis of the claim for such exemption; a copy of the instrument establishing the trustee's title, powers or duties; an inventory of the assets of such trust; and, annually, a copy of each publicly available United States tax or information return or report of the trust which the trustee files with the internal revenue service. The trustees of charitable trusts existing at the time this chapter takes effect or on August 9, 1971, shall comply with this section within six months thereafter. [1985 c 30 § 117. Prior: 1984 c 149 § 150; 1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6. Formerly RCW 19.10.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.070 Reports of trustee—Filing—Rules and regulations. Except as otherwise provided every trustee subject to this chapter shall file with the attorney general annual reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, in accordance with rules and regulations of the attorney general.

The attorney general shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required, to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature which will enable him to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The attorney general may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the attorney general after the attorney general has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the attorney general, may be filed as a report required by this section.

The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than one year after any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time *this act takes effect, the first report, unless the filing thereof is suspended, shall be filed within six months after July 30, 1967. [1985 c 30 § 118. Prior: 1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7. Formerly RCW 19.10.070.]

***Reviser's note:** The effective date of this act [1967 ex.s. c 53] was July 30, 1967.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.073 Reports of trustee—Trustees exempt from RCW 11.110.070. The following trustees shall be exempt from the provisions of RCW 11.110.070, but shall file the information required in RCW 11.110.060:

(1) A bank or trust company subject to examination by the supervisor of banking of the state of Washington, the comptroller of the currency of the United States or the board of governors of the federal reserve system; which such bank or trust company is acting as trustee, executor or court-appointed fiduciary: PROVIDED, That a bank or trust company which is a co-fiduciary of a trust shall be deemed to be the sole fiduciary of such trust under this section, if the bank or trust company is custodian of the books and records of the trust and has the responsibility for preparing the reports and returns which are filed with the internal revenue service;

(2) The governing body of a nonprofit community foundation or other nonprofit foundation incorporated for charitable purposes, contributions to which are currently allowed as charitable deductions under the United States income tax laws;

(3) The governing body of a hospital which is nonprofit and charitable, other than a hospital initially formed as a trustee pursuant to or in connection with the terms of a charitable trust. [1985 c 30 § 119. Prior: 1984 c 149 § 153; 1971 ex.s. c 226 § 4. Formerly RCW 19.10.073.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.075 Trust not exclusively for charitable purposes—Instrument and information not public—Filings and reporting, when required. A trust is not exclusively for charitable purposes, within the meaning of RCW 11.110.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW 11.110.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the attorney general and no information as to such noncharitable purpose shall be made public.

Annual reporting of such trusts to the attorney general, as required by RCW 11.110.060 or 11.110.070, shall commence within one year after trust income or principal is authorized or required to be used for a charitable purpose.

When a trust consists of a vested charitable remainder preceded by a life estate, a copy of the instrument shall be filed by the trustee or by the life tenant, within two months after commencement of the life estate.

If the trust instrument contains only contingent gifts or remainders to charitable purposes, no charitable trust shall be deemed created until a charitable gift or remainder is legally vested. The first registration or report of such trust shall be filed within two months after trust income or principal is authorized or required to be used for a charitable purpose. [1985 c 30 § 120. Prior: 1984 c 149 § 154; 1971 ex.s. c 226 § 5. Formerly RCW 19.10.075.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.080 Custodian of court records to furnish copies to attorney general—List of tax exemption applications to be filed. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish within two months after receiving possession or control thereof such copies of papers, records, and files of his office relating to the subject of this chapter as the attorney general shall require.

Every officer, agency, board or commission of this state receiving applications for exemption from taxation of any charitable trust or similar relationship in which the trustee is subject to this chapter shall annually file with the attorney general a list of all applications received during the year. [1985 c 30 § 121. Prior: 1967 ex.s. c 53 § 8. Formerly RCW 19.10.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.090 Uniformity of chapter with laws of other states. It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the necessity for uniform application and enforcement of this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary. [1985 c 30 § 122. Prior: 1967 ex.s. c 53 § 9. Formerly RCW 19.10.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.100 Investigations by attorney general authorized—Appearance and production of books, papers, documents, etc., may be required. The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear. [1985 c 30 § 123. Prior: 1967 ex.s. c 53 § 10. Formerly RCW 19.10.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.110 Order to appear—Effect—Enforcement—Appellate review. When the attorney general requires the attendance of any person, as provided in RCW 11.110.100, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals. [1988 c 202 § 20; 1985 c 30 § 124. Prior: 1984 c 149 § 157; 1971 c 81 § 64; 1967 ex.s. c 53 § 11. Formerly RCW 19.10.110.]

Rules of court: Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.120 Proceedings to secure compliance and proper trust administration—Attorney general to be notified of judicial proceedings involving charitable trust—Powers and duties additional. The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96.100, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it. [1985 c 30 § 125. Prior: 1984 c 149 § 158; 1967 ex.s. c 53 § 12. Formerly RCW 19.10.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.125 Violations—Refusal to file reports, perform duties, etc. The wilful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule or regulation promulgated by the attorney general under this chapter, shall constitute a breach of trust and a violation of this chapter. [1985 c 30 § 126. Prior: 1971 ex.s. c 226 § 6. Formerly RCW 19.10.125.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.130 Violations—Civil action may be prosecuted. A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney designated by the attorney general. [1985 c 30 § 127. Prior: 1967 ex.s. c 53 § 13. Formerly RCW 19.10.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.140 Penalty. Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor. [1985 c 30 § 128. Prior: 1967 ex.s. c 53 § 14. Formerly RCW 19.10.140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.200 Tax Reform Act of 1969, state implementation—Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code. RCW 11.110.200 through 11.110.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code of 1954, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code of 1954, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code of 1954. With respect to any such trust created after December 31, 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971. [1985 c 30 § 129. Prior: 1984 c 149 § 161; 1971 c 58 § 1. Formerly RCW 19.10.200.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.210 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain prohibiting provisions. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(2) Retaining any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(4) Making any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954:

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1954. [1985 c 30 § 130. Prior: 1984 c 149 § 162; 1971 c 58 § 2. Formerly RCW 19.10.210.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.220 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain certain provisions for distribution. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes

specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954. [1985 c 30 § 131. Prior: 1984 c 149 § 163; 1971 c 58 § 3. Formerly RCW 19.10.220.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.230 Tax Reform Act of 1969, state implementation—Rights, powers, of courts, attorney general, not impaired. Nothing in RCW 11.110.200 through 11.110.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust. [1985 c 30 § 132. Prior: 1984 c 149 § 164; 1971 c 58 § 4. Formerly RCW 19.10.230.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.240 Tax Reform Act of 1969, state implementation—Construction of references to federal code. All references to sections of the Internal Revenue Code of 1954 shall include all amendments thereto adopted by the Congress of the United States on or before January 1, 1985. [1985 c 30 § 133. Prior: 1984 c 149 § 165; 1982 1st ex.s. c 41 § 3; 1971 c 58 § 5. Formerly RCW 19.10.240.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.250 Tax Reform Act of 1969, state implementation—Application to trust created after June 10, 1971, or amendment to existing trust. Nothing in RCW 11.110.200 through 11.110.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW 11.110.210 and 11.110.220 shall have no application to such trust. [1985 c 30 § 134. Prior: 1984 c 149 § 167; 1971 c 58 § 6. Formerly RCW 19.10.250.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.260 Tax Reform Act of 1969, state implementation—Severability—RCW 11.110.200 through 11.110.260. If any provision of RCW 11.110.200 through 11.110.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW 11.110.200 through 11.110.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 11.110.200 through 11.110.260 are declared to be severable. [1985 c 30 § 135. Prior: 1984 c 149 § 168; 1971 c 58 § 7. Formerly RCW 19.10.260.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.270 Tax Reform Act of 1969, state implementation—Not for profit corporations. See RCW 24.40.010 through 24.40.070.

11.110.900 Severability—1967 ex.s. c 53. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 136. Prior: 1967 ex.s. c 53 § 15. Formerly RCW 19.10.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.114
UNIFORM TRANSFERS TO MINORS ACT

Sections

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

(1) "Adult" means an individual who has attained the age of twenty-one years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions. Conservator means guardian for transfers made under another state's law but enforceable in this state's courts.

(5) "Court" means a superior court of the state of Washington.

(6) "Custodial property" means (a) any interest in property transferred to a custodian under this chapter and (b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under RCW 11.114.090 or a successor or substitute custodian designated under RCW 11.114.180.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or guardian.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(14) "Transfer" means a transaction that creates custodial property under RCW 11.114.090.

(15) "Transferor" means a person who makes a transfer under this chapter.

(16) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers. [1991 c 193 § 1.]

11.114.020 Scope and jurisdiction. (1) This chapter applies to a transfer that refers to this chapter in the designation under RCW 11.114.090(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter under this chapter subject to court determination is governed by the procedures provided in chapter 11.96 RCW. However, no guardian ad litem is required for the minor, except under RCW 11.114.190(1), in the case of a petition by a unrepresented minor under the age of fourteen years. [1991 c 193 § 2.]

11.114.030 Nomination of custodian. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under RCW 11.114.090(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under RCW 11.114.090. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to RCW 11.114.090. [1991 c 193 § 3.]

11.114.040 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to RCW 11.114.090. [1991 c 193 § 4.]

11.114.050 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to RCW 11.114.090 to a custodian for the benefit of a minor as authorized in the governing will or trust. The personal representative or trustee may designate himself or herself as custodian provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) If the testator or grantor has nominated a custodian under RCW 11.114.030 to receive the custodial property, the transfer shall be made to that person.

(3) If the testator or grantor has not nominated a custodian under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under RCW 11.114.090(1). The personal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of

persons eligible to serve as custodian under RCW 11.114.090(1). [1991 c 193 § 5.]

11.114.060 Other transfer by fiduciary. (1) A personal representative or trustee may make an irrevocable transfer to an adult or trust company for the benefit of a minor pursuant to RCW 11.114.090, in the absence of a will or under a will or trust that does not contain an authorization to do so, but only if:

(a) The personal representative or trustee, or the court if an order is requested under (c) of this subsection, considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust instrument, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds thirty thousand dollars in value.

The personal representative, the trustee, or a member of the minor's family may select the custodian, subject to court approval. The personal representative or trustee may serve as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A member of the minor's family may request that the court establish a custodianship if a custodianship has not already been established, regardless of the value of the transfer. [1991 c 193 § 6.]

11.114.070 Transfer by obligor. (1) Subject to subsections (2) and (3) of this section, a person not subject to RCW 11.114.050 or 11.114.060 who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to RCW 11.114.090.

(2) If a person having the right to do so under RCW 11.114.030 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds thirty thousand dollars in value.

(4) A member of the minor's family or the person who holds the property of the minor or who owes a debt to the minor may request that the court establish a custodianship if not previously established, regardless of the value of the transfer. [1991 c 193 § 7.]

11.114.080 Receipt for custodial property. A written confirmation of delivery by a custodian constitutes a sufficient receipt and discharge of the transferor for custodial property transferred to the custodian under this chapter. [1991 c 193 § 8.]

11.114.090 Manner of creating custodial property and effecting transfer—Designation of initial custodian—Control. (1) Custodial property is created and a transfer is made if:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act"; or

(g) An interest in any property not described in (a) through (f) of this subsection is transferred to an adult other

than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of subsection (1) (a)(ii) and (g) of this section:

"TRANSFER UNDER THE WASHINGTON UNIFORM TRANSFERS TO MINORS ACT

I, ... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to . . . . . (name of custodian), as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: . . . . . .

. . . . . .

(Signature)

. . . . . (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Washington uniform transfers to minors act.

Dated: . . . . . .

. . . . . "

(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable. [1991 c 193 § 9.]

11.114.100 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship. [1991 c 193 § 10.]

11.114.110 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) Failure of the transferor to comply with RCW 11.114.090(3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under RCW 11.114.090(1); or

(c) Death or incapacity of a person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to RCW 11.114.090 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter. [1991 c 193 § 11.]

11.114.120 Care of custodial property. (1) A custodian shall, as soon as custodial property is made available to the custodian:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter 11.100 RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW 11.100.060. However, the provisions of RCW 11.100.025, 11.100.040, and 11.100.140 shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: ". . . . . as custodian for . . . . . (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years. [1991 c 193 § 12.]

11.114.130 Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, including without limitation all the powers granted to a trustee under RCW 11.98.070, but a custodian may exercise those rights, powers, and authority only in a custodial capacity.

(2) This section does not relieve a custodian from liability for breach of RCW 11.114.120. [1991 c 193 § 13.]

11.114.140 Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the

minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor. [1991 c 193 § 14.]

11.114.150 Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under RCW 11.114.040, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in RCW 11.114.180(6), a custodian need not give a bond.

(4) Notwithstanding RCW 11.114.190, a custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing, or gross negligence, or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [1991 c 193 § 15.]

11.114.160 Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian or successor custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian. [1991 c 193 § 16.]

11.114.170 Liability to third persons. (1) A claim based on:

(a) A contract entered into by a custodian acting in a custodial capacity;

(b) An obligation arising from the ownership or control of custodial property;

(c) A tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor; or

(d) A noncontractual obligation, including obligations in tort, is collectible from the custodial property only if:

(i) The obligation was a common incident of the kind of business activity in which the custodian or the custodian's predecessor was properly engaged for the custodianship;

(ii) Neither the custodian nor the custodian's predecessor, nor any officer or employee of the custodian or the custodian's predecessor was personally at fault in incurring the obligation; or

(iii) Although the obligation did not fall within (d)(i) or (ii) of this subsection, the incident that gave rise to the obligation increased the value of the custodial property.

If the obligation is within (d)(i) or (ii) or [of] this subsection, collection may be had of the full amount of damage proved. If the obligation is within (d)(iii) of this subsection, collection may be had only to the extent of the increase in the value of the trust property.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity. The addition of the words "custodian" or "as custodian" after the signature of a custodian is adequate revelation of this capacity; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodial property is not liable for the obligation under *(b) of this subsection and unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault. [1991 c 193 § 17.]

***Reviser's note:** The reference to (b) of this subsection appears erroneous. Reference to subsection (1)(b) of this section was apparently intended.

11.114.180 Renunciation, resignation, death, or removal of custodian—Designation of successor custodian. (1) A person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under RCW 11.114.030, the person who made the nomination may nominate a substitute custodian under RCW 11.114.030; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under RCW 11.114.090(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under RCW 11.114.040 as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age

of fourteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under RCW 11.114.040 or to require the custodian to give appropriate bond. [1991 c 193 § 18.]

11.114.190 Accounting by and determination of liability of custodian. (1) A minor who has attained the age of fourteen years, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under RCW 11.114.170 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under RCW 11.114.180(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property. [1991 c 193 § 19.]

11.114.200 Termination of custodianship. Subject to RCW 11.114.220, the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW 11.114.040 or 11.114.050;

(2) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW 11.114.060 or 11.114.070; or

(3) The minor's death. [1991 c 193 § 20.]

11.114.210 Applicability. This chapter applies to a transfer within the scope of RCW 11.114.020 made after July 1, 1991, if:

(1) The transfer purports to have been made under the Washington uniform gifts to minors act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this chapter is necessary to validate the transfer. [1991 c 193 § 21.]

11.114.220 Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this chapter made before July 1, 1991, is validated notwithstanding that there was no specific authority in the Washington uniform gifts to minors act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before July 1, 1991, in a manner and form prescribed in the Washington uniform gifts to minors act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1991. However, as to any custodianship established after August 9, 1971, but prior to January 1, 1985, a minor has the right after attaining the age of eighteen to demand delivery from the custodian of all or any portion of the custodial property. [1991 c 193 § 22.]

11.114.230 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1991 c 193 § 23.]

11.114.900 Short title. This chapter may be cited as the uniform transfers to minors act. [1991 c 193 § 24.]

11.114.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 193 § 25.]

11.114.902 Savings—1991 c 193. To the extent that this chapter, by virtue of RCW 11.114.220(2), does not apply to transfers made in a manner prescribed in the uniform gifts to minors act of Washington or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the uniform gifts to minors act of Washington does not affect those transfers or those powers, duties, and immunities. [1991 c 193 § 26.]

11.114.903 Effective date—1991 c 193. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991. [1991 c 193 § 34.]

11.114.904 Severability—1991 c 193. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 193 § 35.]

Title 12
DISTRICT COURTS—CIVIL PROCEDURE

Chapters

Creditors' rights: RCW 62A.8-317.

District and other inferior courts—1961 Act: Chapter 3.30 RCW.

Garnishment: Chapter 6.27 RCW.

General provisions regarding district judges: Title 3 RCW.

Jurisdiction of justice of the peace: State Constitution Art. 4 § 10 (Amendment 28).

Justice without unnecessary delay: State Constitution Art. 1 § 10.

Ne exeat, jurisdiction of district judge: RCW 7.44.060.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Removal of certain civil actions to superior court: Chapter 4.14 RCW.

Rules for courts of limited jurisdiction: Volume 0.

Chapter 12.04
COMMENCEMENT OF ACTIONS

Sections

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

12.04.010 Civil actions—Commencement. Civil actions in the several justices' courts of this state may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice shall be attached to the copy of the complaint and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint. [Code 1881 § 1712; 1873 p 335 § 19; 1860 p 245 § 26; RRS § 1755.]

12.04.020 Action to recover debt—Summons—Service. A party desiring to commence an action before a justice of the peace, for the recovery of a debt by summons, shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney, and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz:

The State of Washington, }
. . . . . County. } ss.

To the sheriff or any constable of said county:

In the name of the state of Washington, you are hereby commanded to summon . . . . . if he (or they) be found in your county to be and appear before me at . . . . . on . . . . day of . . . . . at . . . . o'clock p.m. or a.m., to answer the complaint of . . . . . for a failure to pay him a certain demand, amounting to . . . . . dollars and . . . . cents, upon . . . . . (here state briefly the nature of the claim) and of this writ make due service and return.

Given under my hand this . . . . day of . . . . . 19. . .
. . . . . , Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode with some person over twelve years of age, a true copy of such summons, certified by the officer to be such. [Code 1881 § 1713; 1873 p 335 § 20; 1860 p 245 § 29; RRS § 1758.]

12.04.030 Action by complaint and notice. Any person desiring to commence an action before a justice of

the peace, by the service of a complaint and notice, can do so by filing his complaint verified by his own oath or that of his agent or attorney with the justice, and when such complaint is so filed, upon payment of his fees if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

The State of Washington, } ss.
. . . . . County. }

To . . . . . .

You are hereby notified to be and appear at my office in . . . . . on the . . . . day of . . . . . ., 19. . ., at the hour of . . . . M., to answer to the foregoing complaint or judgment will be taken against you as confessed and the prayer of the plaintiff granted.

Dated . . . . . ., 19. . .

. . . . . , J. P.

[Code 1881 § 1714; 1873 p 336 § 21; 1860 p 245 § 29; RRS § 1759.]

12.04.040 Service of complaint and notice. The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice. [1925 ex.s. c 181 § 1; Code 1881 § 1715; 1873 p 337 § 22; RRS § 1761.]

12.04.050 Process—Who may serve. All process issued by district court judges of the state and all executions and writs of attachment or of replevin shall be served by a sheriff or a deputy, but a summons or notice and complaint may be served by any citizen of the state of Washington over the age of eighteen years and not a party to the action. [1987 c 442 § 1102; 1971 ex.s. c 292 § 11; 1903 c 19 § 1; 1895 c 102 § 1; 1893 c 108 § 1; Code 1881 § 1716; 1873 p 337 § 23; RRS § 1762. Formerly RCW 12.04.050 and 12.04.060, part.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.060 Process—Service by constable or sheriff. All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his duly appointed deputy; and all fees for such service shall be paid into the county treasury. [1909 c 132 § 1; RRS § 1760. FORMER PARTS OF SECTION: 1903 c 19 § 1, part, now codified in RCW 12.04.050.]

12.04.070 Process—Return—Fees. Every constable or sheriff serving process or complaint and notice shall return in writing, the time, manner and place of service and indorse thereon the legal fees therefor and shall sign his name to such return, and any person other than one of said officers serving summons or complaint and notice shall file with the justice his affidavit, stating the time, place and manner of the service of such summons or notice and complaint and shall indorse thereon the legal fees therefor. [1959 c 99 § 1; 1903 c 19 § 2; 1895 c 102 § 2; 1893 c 108 § 2; Code 1881 § 1717; 1873 p 337 § 24; 1860 p 246 § 37; 1854 p 229 § 31; RRS § 1763.]

12.04.080 Process—Service by person appointed by justice—Return—Exceptions. Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his fees for service thereon: PROVIDED, It shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: PROVIDED FURTHER, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person eighteen years of age or over and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. [1971 ex.s. c 292 § 12; 1903 c 19 § 3; Code 1881 § 1718; 1873 p 337 § 25; RRS § 1764.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.090 Proof of service. Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his return signed by him and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service. [Code 1881 § 1719; 1873 p 337 § 26; RRS § 1765.]

12.04.100 Service by publication. In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint, in some newspaper of general circulation in the county wherein the action is commenced, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of the notice.

The notice may be substantially as follows:

The State of Washington, } ss.
County of . . . . . }

In justice's court, ... justice.

To . . . . . .

You are hereby notified that . . . . . has filed a complaint (or claim as the case may be) against you in said court which will come on to be heard at my office in . . . . . ., in . . . . . county, state of Washington, on the . . . . day of . . . . . ., A.D. 19. . ., at the hour of . . . . o'clock . . . . m., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff

granted. The object and demand of said claim (or complaint, as the case may be) is (here insert a brief statement).

Complaint filed . . . . . ., A.D. 19. . .

. . . . . , J.P.

[1985 c 469 § 6; Code 1881 § 1720; 1873 p 337 § 27; RRS § 1766.]

Legal publications: Chapter 65.16 RCW.

12.04.110 Proof of service by publication. Proof of service, in case of publication, shall be the affidavit of the publisher, printer, foreman or principal clerk, showing the same. [Code 1881 § 1721; 1873 p 338 § 28; RRS § 1767.]

12.04.120 Written admission as proof of service. The written admission of the defendant, his agent or attorney, indorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case. [Code 1881 § 1722; 1873 p 338 § 29; RRS § 1768.]

12.04.130 Jurisdiction, when acquired. The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings. [Code 1881 § 1723; 1873 p 338 § 30; RRS § 1769.]

12.04.140 Action by person under eighteen years. Except as provided under RCW 26.50.020, no action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his or her next friend in such action, who shall be responsible for the costs therein. [1992 c 111 § 10; 1971 ex.s. c 292 § 75; Code 1881 § 1753; 1873 p 343 § 52; 1854 p 230 § 40; RRS § 1771.]

Severability—1992 c 111: See RCW 26.50.903.

Findings—1992 c 111: See note following RCW 26.50.030.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.150 Action against defendant under eighteen years—Guardian ad litem. After service and return of process against a defendant under the age of eighteen years, the action shall not be further prosecuted, until a guardian for such defendant shall have been appointed, except as provided under RCW 26.50.020. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he or she neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action. [1992 c 111 § 11; 1971 ex.s. c 292 § 76; Code 1881 § 1754; 1873 p 343 § 53; 1854 p 230 § 41; RRS § 1772.]

Severability—1992 c 111: See RCW 26.50.903.

Findings—1992 c 111: See note following RCW 26.50.030.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.160 Time for appearance. The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial. [1957 c 89 § 1; Code 1881 § 1755; 1873 p 344 § 54; 1854 p 230 § 42; RRS § 1773.]

12.04.170 Security for nonresident costs. Whenever the plaintiff in an action, or in a garnishment or other proceeding is a nonresident of the county or begins such action or proceeding as the assignee of some other person, or of a firm or corporation, as to all causes of action sued upon, the justice may require of him security for the costs in the action or proceeding in a sum not exceeding fifty dollars, at the time of the commencement of the action, and after an action or proceeding has been commenced by such nonresident or assignee plaintiff, the defendant or garnishee defendant may require such security by motion; and all proceedings shall be stayed until such security has been given. [1929 c 102 § 1; 1905 c 10 § 1; Code 1881 § 1725; 1854 p 228 § 27; RRS § 1777.]

12.04.180 Cost bond in lieu of security. In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of fifty dollars running to the state of Washington, with surety approved by the court, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action. [1929 c 102 § 2; RRS § 1777 1/2.]

12.04.190 Penalty for failure to execute process or false return. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action. [Code 1881 § 1752; 1873 p 343 § 51; 1854 p 230 § 39; RRS § 1776.]

12.04.200 Forms or equivalents prescribed. The forms or equivalent forms as set forth in RCW 12.04.201 through 12.04.208 may be used by justices of the peace, in civil actions and proceedings under this chapter. [1957 c 89 § 3. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.201 Form of subpoena.

FORM OF SUBPOENA

State of Washington, }
County of . . . . . , } ss.

To . . . . . :

In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the . . . . day of . . . . . ., 19. . ., at . . . . o'clock in the . . . . noon, at his office in . . . . . ., to give evidence in a certain cause, then and there to be tried, between A B, plaintiff, and C D, defendant, on the part of (the plaintiff, or defendant as the case may be).

Given under my hand this . . . . day of . . . . . ., 19. . .

J. P., Justice of the Peace.

[1957 c 89 § 4. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.203 Form of execution—Form of execution against principal and surety, after expiration of stay of execution.

FORM OF EXECUTION

State of Washington, }
County of . . . . . , } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D, for the sum of . . . . . dollars, and . . . . . dollars cost of suit, was recovered on the . . . . day of . . . . . ., 19. . ., before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his debt, interests and costs.

Given under my hand this . . . . day of . . . . . ., 19. . .

J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION

State of Washington, }
County of . . . . . , } ss.

To the sheriff or any constable of said county:

Whereas, judgment against C D for the sum of . . . . . dollars, and for . . . . . dollars, costs of suit, was recovered on the . . . . day of . . . . . ., 19. . ., before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the . . . . day of . . . . . ., 19. . ., E F became surety to pay said judgment and costs, in . . . . . month from the date of the judgment aforesaid, agreeably to law, in the payment of which said C D and E F have failed; these are, therefore, in the name, etc., [as in the common form].

[1957 c 89 § 5. Prior: Code 1881 § 1895, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.204 Form of order in replevin.

FORM OF ORDER IN REPLEVIN

State of Washington, }
County of . . . . . , } ss.

To the sheriff or any constable of said county:

In the name of the state of Washington, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery, the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this . . . . day of . . . . . ., 19. . .

J. P., Justice of the Peace.

[1957 c 89 § 6. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.205 Form of a writ of attachment.

FORM OF A WRIT OF ATTACHMENT

State of Washington, }
County of . . . . . , } ss.

To the sheriff or any constable of said county:

In the name of the state of Washington, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects and credits of C D, (excepting such as the law exempts), or so much thereof as shall satisfy the sum of . . . . . dollars, with interest and cost of suit, in whosesoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this . . . . day of . . . . . ., 19. . .

J. P., Justice of the Peace.

[1957 c 89 § 7. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.206 Form of undertaking in replevin.

FORM OF UNDERTAKING IN REPLEVIN

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for . . . . . county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit: [here set forth the property claimed]. Now, therefore we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of . . . . . dollars for the prosecution of the action for the

return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the . . . . day of . . . . . ., 19. . . A B, E F, G H.

[1957 c 89 § 8. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.207 Form of undertaking in attachment—Form of undertaking to discharge attachment.

FORM OF UNDERTAKING IN ATTACHMENT

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for . . . . . county, for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of . . . . . dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment and not exceeding the sum of . . . . . dollars.

Dated the . . . . day of . . . . . ., 19. . . A B, E F.

FORM OF UNDERTAKING
TO DISCHARGE ATTACHMENT

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for . . . . . county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now, therefore, we C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of . . . . . dollars, [double the value of the property], engaging to deliver the property attached, to wit: [here set forth a list of articles attached], or pay the value thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this . . . . day of . . . . . ., 19. . . C D, E F, G H.

[1957 c 89 § 9. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 § 19, part; RRS § 1890, part.]

12.04.208 Form of undertaking to indemnify constable on claim of property by a third person.

FORM OF UNDERTAKING
TO INDEMNIFY CONSTABLE ON CLAIM OF
PROPERTY BY A THIRD PERSON

Whereas, L M, claims to be owner of, and have the right to possession of certain personal property, to wit: [here describe it] which has been taken by J K, constable in . . . . . county, upon an execution by J P, justice of the peace in and for the county of . . . . . ., upon a judgment obtained by A B, plaintiff, against C D, defendant; Now, therefore, we A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of . . . . . dollars, to indemnify the said J K against such claim. A B, E F, G H.

[1957 c 89 § 10. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

Chapter 12.08
PLEADINGS

Sections

12.08.010 When pleadings take place. The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed or unless the justice shall, for good cause shown, allow a longer time than the time of appearance. [Code 1881 § 1756; 1873 p 344 § 55; 1854 p 231 § 43; RRS § 1778.]

12.08.020 What constitute pleadings. The pleadings in the justice's court shall be:

(1) The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

(2) The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a statement, in a plain and direct manner, of any facts constituting a defense.

(3) When the answer sets up a setoff, by way of defense, the reply of the plaintiff. [Code 1881 § 1757; 1873 p 344 § 56; 1854 p 231 § 44; RRS § 1779.]

12.08.030 Pleadings oral or written. The pleadings in justices' courts may be oral or in writing. [1957 c 89 § 11; Code 1881 § 1758; 1873 p 344 § 57; 1854 p 231 § 45; RRS § 1780.]

12.08.040 Docketing or filing. When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing they shall be filed in his office and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended. [Code 1881 § 1759; 1873 p 345 § 58; 1854 p 231 § 46; RRS § 1781.]

12.08.050 Denial of knowledge or information—Effect. A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a

denial. [Code 1881 § 1760; 1873 p 345 § 59; 1854 p 231 § 47; RRS § 1782.]

12.08.060 Pleading account or instrument. When the cause of action, or setoff, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or setoff. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence. [Code 1881 § 1761; 1873 p 345 § 60; 1854 p 231 § 48; RRS § 1783.]

12.08.070 Verification. Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified. [Code 1881 § 1762; 1873 p 345 § 61; 1854 p 232 § 49; RRS § 1784.]

12.08.080 Uncontroverted allegations—Effect. Every material allegation in a complaint, or relating to a setoff in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case. [Code 1881 § 1763; 1873 p 345 § 62; 1854 p 232 § 50; RRS § 1785.]

12.08.090 Objections to pleadings—Amendment. Either party may object to a pleading by his adversary, or to any part thereof that is not sufficiently explicit for him to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded. [Code 1881 § 1764; 1873 p 345 § 63; 1854 p 232 § 51; RRS § 1786.]

12.08.100 Variance between pleading and proof. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby. [Code 1881 § 1765; 1873 p 346 § 64; 1854 p 232 § 52; RRS § 1787.]

12.08.110 Amendments—Continuance. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party. [Code 1881 § 1766; 1873 p 346 § 65; 1854 p 232 § 53; RRS § 1788.]

12.08.120 Setoff—Pleading. To entitle a defendant to any setoff he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating setoffs in the superior court, shall in all respects be applicable to a setoff in a justice's court, if the amount claimed to be setoff, after deducting the amount found due to the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due the plaintiff. [Code 1881 § 1767; 1873 p 346 § 66; 1854 p 232 § 54; RRS § 1789.]

Reviser's note: Justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

Chapter 12.12
TRIAL

Sections

12.12.010 Continuances limited. When the pleadings of the party shall have taken place, the justice shall, upon the application of either party, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuance in the superior court. [1957 c 89 § 12; Code 1881 § 1769; 1873 p 346 § 68; 1854 p 232 § 56; RRS § 1847.]

12.12.020 Trial by justice. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly. [Code 1881 § 1782; 1873 p 350 § 81; 1854 p 237 § 82; RRS § 1848.]

12.12.030 Jury—Number—Qualifications—Fee. After the appearance of the defendant, and before the justice shall proceed to enquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful persons having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a lesser number: PROVIDED, That the party demanding the jury shall first pay to the justice the sum of twenty-five dollars, which shall be paid over by the justice to the county, and said amount shall be taxed as costs against the losing party. [1981 c 260 § 3. Prior: 1977 ex.s. c 248 § 2; 1977 ex.s. c 53 § 2; 1888

p 118 § 1; Code 1881 § 1770; 1863 p 438 § 51; 1862 p 58 § 1; 1854 p 235 § 70; RRS § 1849.]

12.12.070 Oath administered. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause. [Code 1881 § 1776; 1873 p 348 § 75; 1854 p 236 § 76; RRS § 1853.]

12.12.080 Delivery of verdict. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket. [Code 1881 § 1777; 1873 p 348 § 76; 1854 p 236 § 77; RRS § 1854.]

12.12.090 Discharge of jury. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce. [Code 1881 § 1778; 1873 p 348 § 77; 1854 p 236 § 78; RRS § 1855.]

Chapter 12.16
WITNESSES AND DEPOSITIONS

Sections

Oaths and affirmations: Chapter 5.28 RCW.

12.16.015 District court may compel attendance of witness. Any person may be compelled to attend as a witness before a district court in accordance with chapter 5.56 RCW. [1984 c 258 § 702.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.16.020 Service of subpoena. A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode. [Code 1881 § 1870; 1873 p 370 § 169; 1854 p 233 § 58; RRS § 1899.]

12.16.030 Attachment for nonappearance. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness: PROVIDED, That no attachment shall issue against a witness in any civil action, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena. [Code 1881 § 1871; 1873 p 370 § 170; 1854 p 233 § 59; RRS § 1900.]

Attachment of a witness: RCW 5.56.070.
When witness must attend: RCW 5.56.010.

12.16.040 Service of attachment—Fees. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs. [Code 1881 § 1872; 1873 p 370 § 171; 1854 p 233 § 60; RRS § 1901.]

Attachment, to whom directed—Execution: RCW 5.56.080.

12.16.050 Damages for nonappearance. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his nonappearance: PROVIDED, That such witness had the fees allowed for mileage and one day's attendance paid, or tendered him, in advance, if demanded by him at the time of the service. [Code 1881 § 1873; 1873 p 371 § 172; 1854 p 234 § 61; RRS § 1902.]

Result of failure to attend: RCW 5.56.060, 5.56.061.
When witness must attend: RCW 5.56.010.

12.16.060 Party to action as adverse witness. A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken. [Code 1881 § 1874; 1873 p 371 § 173; 1854 p 234 § 62; RRS § 1903.]

12.16.070 Testimony of party may be rebutted. The examination of a party thus taken, may be rebutted by adverse testimony. [Code 1881 § 1875; 1873 p 371 § 174; 1854 p 234 § 63; RRS § 1904.]

12.16.080 Procedure on party's refusal to testify. If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer or reply, may be stricken out, and judgment taken against him. [Code 1881 § 1876; 1873 p 371 § 175; 1854 p 234 § 64; RRS § 1905.]

*Penalty for failure to testify: **Rules of court:** CR 43(f)(3).*

12.16.090 Examination of party in his own behalf. A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when

his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received. [Code 1881 § 1877; 1873 p 371 § 176; 1854 p 234 § 65; RRS § 1906.]

Chapter 12.20
JUDGMENTS

Sections

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

12.20.010 Judgment of dismissal. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

(1) When the plaintiff voluntarily dismisses the action before it is finally submitted.

(2) When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

(3) When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county [precinct]; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal. [Code 1881 § 1780; 1873 p 348 § 79; 1863 p 349 § 61; 1854 p 236 § 80; RRS § 1857.]

12.20.020 Judgment by default. When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

(1) When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

(2) In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

(3) The justice shall have full power at any time after a judgment has been given by default for failure of the defendant to appear and plead at the proper time, to vacate and set aside said judgment for any good cause and upon such terms as he shall deem sufficient and proper. Such judgment shall only be set aside upon five days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the justice within ten days after the entry of the judgment. The justice shall hear the application to set aside such judgment either upon affidavits or oral testimony as he may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits: PROVIDED, That, no justice of the peace shall pay out or turn over money or property received by him by virtue of any default judgment until the expiration of the ten days for moving to set aside such default judgment has expired. [1915 c 41 § 1; Code 1881 § 1781; 1873 p 349 § 79; 1863 p 349 § 62; 1854 p 237 § 81; RRS § 1858.]

12.20.030 Judgment on merits. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered within three days after the close of the trial. [1957 c 89 § 13; Code 1881 § 1783; 1873 p 350 § 82; 1854 p 237 § 83; RRS § 1859.]

12.20.040 Tender—Effect of, on judgment. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he do not accept such offer before the trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided. [Code 1881 § 1784; 1873 p 350 § 83; 1863 p 350 § 65; 1854 p 237 § 84; RRS § 1860.]

12.20.050 Setoff—Limitation of judgment. When the setoff of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant. [Code 1881 § 1768; 1873 p 346 § 67; 1854 p 232 § 55; RRS § 1861.]

12.20.060 Judgment for costs—Attorney's fee. When the prevailing party in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the judge shall enter up a judgment in favor of the defendant for the amount of his costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees of fifty dollars as part of the costs: PROVIDED, HOWEVER, That the plaintiff shall not be entitled to such attorney fee unless he obtains, exclusive of costs, a judgment in the sum of twenty-five dollars or more. [1985 c 240 § 2; 1984 c 258 § 89; 1975-'76 2nd ex.s. c 30 § 1; 1915 c 43 § 1; 1893 c 12 § 1; Code 1881 § 1785; 1873 p 350 § 84; 1854 p 237 § 85; RRS § 1862.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Attorneys' fee as costs in damage actions of ten thousand dollars or less: RCW 4.84.250 through 4.84.300.

12.20.070 Proceedings where title to land is involved. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title

to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit. [Code 1881 § 1868; 1873 p 369 § 167; 1854 p 235 § 69; RRS § 1863.]

Chapter 12.28
REPLEVIN

Sections

12.28.005 Chapter 7.64 RCW available to plaintiff in action to recover possession of personal property. The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of the property, after a hearing, as provided in chapter 7.64 RCW. [1979 ex.s. c 132 § 8.]

Severability—1979 ex.s. c 132: See RCW 7.64.900.

Chapter 12.36
APPEALS

Sections

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

Costs in appeal from district courts: RCW 4.84.130.

12.36.010 Appeal authorized. Any person considering himself aggrieved by the judgment or decision of a justice of the peace in a civil action may, in person or by his agent or attorney, appeal therefrom to the superior court of the county where the judgment was rendered or decision made: PROVIDED, There shall be no appeal allowed unless the amount in controversy, exclusive of costs, shall exceed the sum of twenty dollars: PROVIDED FURTHER, That an appeal from the court's determination or order on a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). [1979 ex.s. c 136 § 21; 1929 c 58 § 1; RRS § 1910. Prior: 1905 c 20 § 1; 1891 c 29 § 1; Code 1881 § 1858; 1873 p 367 § 156; 1854 p 252 § 160.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

12.36.020 Appeal—How taken—Bond. Such appeal shall be taken by serving a copy of notice of appeal on the adverse party or his attorney, and filing such notice of appeal with the justice, and, unless such appeal be by a county, city, town or school district, filing a bond or undertaking, as herein provided, within twenty days after the judgment is rendered or decision made. No appeal, except when such appeal is by a county, city, town or school district, shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, conditioned that the appellant will pay all costs that may be awarded against him on appeal; or if a stay of proceedings before the justice be claimed, except by a county, city, town or school district, a bond or undertaking, with two or more personal sureties, or a surety company as surety, to be approved by the justice, in a sum equal to twice the amount of the judgment and costs, conditioned that the appellant will pay such judgment, including costs, as may be rendered against him on appeal, be so executed and filed. [1929 c 58 § 2; RRS § 1911. Prior: 1891 c 29 § 1; Code 1881 § 1859; 1873 p 367 §§ 157, 158; 1854 p 252 §§ 161, 162.]

12.36.030 Stay of proceedings. Upon an appeal being taken and a bond filed to stay all proceedings, the justice shall allow the same and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the meantime execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed. [1929 c 58 § 3; RRS § 1912. Prior: Code 1881 § 1861; 1873 p 368 § 160; 1854 p 252 § 164.]

12.36.040 Release of property taken on execution. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the judgment debtor that may have been taken on execution. [1929 c 58 § 4; RRS § 1913. Prior: Code 1881 § 1862; 1873 p 368 § 161; 1854 p 252 § 165.]

12.36.050 Transcript—Procedure in superior court—Pleadings in superior court. Within ten days after the appeal has been taken in a civil action or proceeding, the appellant shall file with the clerk of the superior court a transcript of all entries made in the justice's docket relating to the case, together with all the process and other papers relating to the case filed with the justice which shall be made and certified by such justice to be correct upon the payment of the fees allowed by law therefor, and upon the filing of such transcript, the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as in this chapter otherwise provided. The issue before the justice shall be tried in the superior court without other or new pleadings, unless otherwise directed by the court. [1929 c 58 § 5; RRS §§ 1914, 1915. Prior: 1891 c 29 § 4; Code 1881 § 1863; 1873

p 368 § 162; 1854 p 252 § 166. Formerly RCW 12.36.050 and 12.36.060.]

12.36.070 Transcript—Procedure on failure to make and certify—Amendment. If upon an appeal being taken the justice shall fail, neglect or refuse, upon the tender or payment of the fees allowed by law, to make and certify the transcript, the appellant may make application, supported by affidavit, to the superior court and the court shall issue an order directing the justice to make and certify such transcript upon the payment of such fees, and whenever it shall appear to the satisfaction of the superior court that the return of the justice to such order is substantially erroneous or defective it may order him to amend the same. If the justice shall fail, neglect or refuse to comply with any order issued under the provisions of this section he may be cited and punished as for contempt of court. [1929 c 58 § 6; RRS § 1916. Prior: 1891 c 29 § 5; Code 1881 § 1865; 1854 p 253 § 168.]

12.36.080 No dismissal for defective bond. No appeal allowed by a justice of the peace shall be dismissed on account of any defect in the bond on appeal, if the appellant, before the motion is determined, shall execute and file in the superior court such bond as he should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect. [1929 c 58 § 7; RRS § 1917. Prior: Code 1881 § 1867; 1873 p 369 § 165; 1854 p 253 § 169.]

12.36.090 Judgment against appellant and sureties. In all cases of appeal to the superior court, if on the trial anew in such court, the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him and his sureties on the bond on appeal. [1929 c 58 § 8; RRS § 1918. Prior: Code 1881 § 1867; 1873 p 369 § 166; 1854 p 253 § 170.]

Chapter 12.40
SMALL CLAIMS

Sections

12.40.010 Department authorized—Jurisdictional amount. In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court". The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed two thousand five hundred dollars. [1991 c 71 § 1; 1988 c 85 § 1; 1984 c 258 § 57; 1981 c 331 § 10; 1979 c 102 § 4; 1973 c 128 § 1; 1970 ex.s. c 83 § 1; 1963 c 123 § 1; 1919 c 187 § 1; RRS § 1777-1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Application, savings—Effective date—Severability—1979 c 102: See notes following RCW 3.66.020.

12.40.020 Action—Commencement—Fee. A small claims action shall be commenced by the plaintiff filing a claim, in the form prescribed by RCW 12.40.050, in the small claims department. A filing fee of ten dollars plus any surcharge authorized by RCW 7.75.035 shall be paid when the claim is filed. [1990 c 172 § 3; 1984 c 258 § 58; 1919 c 187 § 2; RRS § 1777-2.]

Effective date—1990 c 172: See note following RCW 7.75.035.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.025 Transfer of action to small claims department. A defendant in a district court proceeding in which the claim is within the jurisdictional amount for the small claims department may in accordance with court rules transfer the action to the small claims department. In the event of such a transfer the provisions of RCW 12.40.070 shall not be applicable if the plaintiff was an assignee of the claim at the time the action was commenced nor shall the provisions of RCW 12.40.080 prohibit an attorney from representing the plaintiff if he was the attorney of record for the plaintiff at the time the action was commenced. [1984 c 258 § 59; 1970 ex.s. c 83 § 2.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.030 Setting case for hearing. Upon filing of a claim, the court shall set a time for hearing of the matter and cause to be issued a notice of the claim which shall be served upon the defendant. [1984 c 258 § 60; 1981 c 330 § 3; 1980 c 162 § 11; 1963 c 123 § 2; 1919 c 187 § 3; RRS § 1777-3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1981 c 330: See note following RCW 3.62.060.

Severability—1980 c 162: See note following RCW 3.02.010.

12.40.040 Service of notice of claim—Fee. The notice of claim can be served either as provided for the service of summons or complaint and notice in civil actions or by registered or certified mail if a return receipt with the signature of the party being served is filed with the court. No other paper is to be served with the notice. The officer serving the notice shall be entitled to receive from the plaintiff, besides mileage, the fee specified in RCW 36.18.040 for such service; which sum, together with the filing fee named in *RCW 12.40.030, shall be added to any

judgment given for plaintiff. [1984 c 258 § 61; 1981 c 194 § 3; 1970 ex.s. c 83 § 3; 1959 c 263 § 9; 1919 c 187 § 4; RRS § 1777-4.]

*Reviser's note: RCW 12.40.030 no longer refers to a filing fee; see instead RCW 12.40.020.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1981 c 194: See note following RCW 36.18.040.

12.40.045 Recovery of fees as court costs. In the event persons other than the sheriff or duly appointed deputies charge a fee for services in excess of the fees allowed under RCW 36.18.040, the prevailing party incurring such charges shall be entitled to recover as court costs only the amount of the fees for such services as provided in RCW 36.18.040. [1981 c 194 § 4.]

Severability—1981 c 194: See note following RCW 36.18.040.

12.40.050 Requisites of claim. A claim filed in the small claims department shall contain: (1) The name and address of the plaintiff; (2) a statement, in brief and concise form, of the nature and amount of the claim and when the claim accrued; and (3) the name and residence of the defendant, if known to the plaintiff, for the purpose of serving the notice of claim on the defendant. [1984 c 258 § 62; 1919 c 187 § 5; RRS § 1777-5.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.060 Requisites of notice. The notice of claim directed to the defendant shall contain: (1) The name and address of the plaintiff; (2) a brief and concise statement of the nature and amount of the claim; (3) a statement directing and requiring defendant to appear personally in the small claims department at a time certain, which shall not be less than five days from the date of service of the notice; and (4) a statement advising the defendant that in case of his or her failure to appear, judgment will be given against defendant for the amount of the claim. [1984 c 258 § 63; 1981 c 331 § 11; 1919 c 187 § 6; RRS § 1777-6.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

12.40.070 Verification of claim. A claim must be verified by the real claimant, and no claim shall be filed or prosecuted in the small claims department by the assignee of the claim. [1984 c 258 § 64; 1919 c 187 § 7; RRS § 1777-7.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.080 Hearing. No attorney at law, legal paraprofessional, nor any person other than the plaintiff and defendant, shall concern himself or herself or in any manner interfere with the prosecution or defense of litigation in the small claims department without the consent of the judge of the district court. A corporation plaintiff may not be represented by an attorney at law, or legal paraprofessional. In the small claims department it shall not be necessary to summon witnesses, but the plaintiff and defendant in any claim shall have the privilege of offering evidence in their behalf by witnesses appearing at such hearing, and the judge may informally consult witnesses or otherwise investigate the controversy between the parties, and give judgment or make such orders as the judge may deem to be right, just and equitable for the disposition of the controversy. [1991 c 71 § 2; 1984 c 258 § 65; 1981 c 331 § 12; 1919 c 187 § 8; RRS § 1777-8.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

12.40.090 Informal pleadings. A formal pleading, other than the claim and notice, shall not be necessary to define the issue between the parties. The hearing and disposition of the actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants. An attachment, garnishment or execution shall not issue from the small claims department on any claim except as provided in this chapter. [1984 c 258 § 66; 1919 c 187 § 9; RRS § 1777-9.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.100 Payment of monetary judgment. If a monetary judgment or order is entered, it shall be the judgment debtor's duty to pay the judgment upon such terms and conditions as the judge shall prescribe. If the judgment is not paid to the prevailing party at the time the judgment is entered and the judgment debtor is present in court, the court may order a payment plan. [1984 c 258 § 67; 1983 c 254 § 1; 1919 c 187 § 10; RRS § 1777-10.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1983 c 254: "This act shall take effect on January 1, 1984." [1983 c 254 § 5.]

12.40.105 Increase of judgment upon failure to pay. If the losing party fails to pay the judgment within twenty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; and (2) the amount specified in RCW 36.18.020(3), without regard to the jurisdictional limits on the small claims department. [1983 c 254 § 2.]

Effective date—1983 c 254: See note following RCW 12.40.100.

12.40.110 Procedure on nonpayment. (1) If the losing party fails to pay the judgment according to the terms and conditions thereof within twenty days or is in arrears on any payment plan, and the prevailing party so notifies the court, the judge before whom such hearing was had shall certify the judgment in substantially the following form:

Washington.

In the District Court of . . . . . County.

. . . . . Plaintiff,

vs.

. . . . . Defendant.

In the Small Claims Department.

This is to certify that: (1) In a certain action before me, the undersigned, had on this the . . . . day of . . . . . 19. . ., wherein . . . . . was plaintiff and . . . . . defendant, jurisdiction of said defendant having been had by personal service (or otherwise) as provided by law, I then and there entered judgment against . . . . . in the sum of . . . . . Dollars; (2) the judgment has not been paid within twenty days or the period otherwise ordered by the court; and (3) pursuant to RCW 12.40.105, the amount of the judgment is hereby increased by any costs of certification under this section and the amount specified in RCW 36.18.020(3).

Witness my hand this . . . . day of . . . . . ., 19. . .

. . . . . .

District Judge sitting in the
Small Claims Department.

(2) The judge shall forthwith enter the judgment transcript on the judgment docket of the district court; and thereafter garnishment, execution, and other process on execution provided by law may issue thereon, as in other judgments of district courts.

(3) Transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases. [1984 c 258 § 68; 1983 c 254 § 3; 1975 1st ex.s. c 40 § 1; 1973 c 128 § 2; 1919 c 187 § 11; RRS § 1777-11.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1983 c 254: See note following RCW 12.40.100.

Inclusion of reasonable costs and attorneys' fees in execution: RCW 6.17.110.

12.40.120 Appeals. No appeal shall be permitted from a judgment of the small claims department of the district court where the amount claimed was less than one hundred dollars. No appeal shall be permitted by a party who requested the exercise of jurisdiction by the small claims department where the amount claimed was less than one thousand dollars. [1988 c 85 § 2; 1984 c 258 § 69; 1970 ex.s. c 83 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.800 Small claims informational brochure—Preparation and distribution. The administrator for the courts and the magistrates association shall prepare a model small claims informational brochure and distribute the model brochure to all small claims departments in the state. This brochure may be modified as necessary by each small claims department and shall be made available to all parties in any small claims action. [1988 c 85 § 3.]

Title 13
JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

Action against parent for wilful injury to property by minor: RCW 4.24.190.

Age of majority: Chapter 26.28 RCW.

Alcoholic beverage control: Title 66 RCW.

Child
abuse: Chapter 26.44 RCW.
custody, action by relative: RCW 26.09.255.
domestic violence prevention: Chapter 26.50 RCW.
labor: Chapters 26.28, 28A.225, 49.12 RCW.
welfare agencies: Chapter 74.15 RCW.

Children and family services: Chapter 74.14A RCW.

Compulsory school attendance: Chapter 28A.225 RCW.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Firearms: RCW 9.41.080, 9.41.240.

Jurisdiction over Indians as to juvenile delinquency and dependent children: Chapter 37.12 RCW.

Leaving children in parked automobile: RCW 9.91.060.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Public institutions, division of children and youth services: Chapter 72.05 RCW.

Report of child abuse: Chapter 26.44 RCW.

State institutions: Title 72 RCW.

Tobacco: RCW 26.28.080.

Vacation and modification of judgments—Causes for enumerated: RCW 4.72.010(5).

Witnesses—Who are disqualified—Privileged communications: RCW 5.60.060.

Youth development and conservation corps: Chapter 43.51 RCW.

Chapter 13.04
BASIC JUVENILE COURT ACT
(Formerly: Juvenile courts)

Sections

Aid to families with dependent children: Chapter 74.12 RCW.

Division of children and youth services; construed in connection with and supplemental to the juvenile court law: RCW 72.05.170 through 72.05.210.

Educational aid for handicapped children: Chapter 28A.155 RCW.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Missing children clearinghouse and hotline: Chapter 13.60 RCW.

Record of traffic charges of juveniles to be furnished juvenile court: RCW 46.20.293.

Relinquishment of permanent care of child: RCW 26.33.090.

Schools designated close security institutions: RCW 72.05.130.

Transfer from minimum security to close security institution—Court order required: RCW 72.05.130(3).

13.04.005 Short title. This chapter shall be known as the "basic juvenile court act". [1977 ex.s. c 291 § 1.]

Effective dates—1977 ex.s. c 291: "Section 57 of this 1977 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of state government and its existing public institutions, and shall take effect on July 1, 1977. The remainder of this 1977 amendatory act shall take effect on July 1, 1978." [1977 ex.s. c 291 § 83.] Section 57 of 1977 ex.s. c 291 is codified as RCW 13.40.030.

Severability—1977 ex.s. c 291: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held

invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 291 § 82.]

The above two annotations apply to 1977 ex.s. c 291. For codification of that act, see Codification Tables, Volume 0.

13.04.011 Definitions. For purposes of this title:

(1) Except as specifically provided in RCW 13.40.020 and chapter 13.24 RCW, as now or hereafter amended, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(2) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(3) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(4) "Parent" or "parents," except as used in chapter 13.34 RCW, as now or hereafter amended, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(5) "Custodian" means that person who has the legal right to custody of the child. [1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—1979 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1979]." [1979 c 155 § 89.]

Severability—1979 c 155: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 155 § 88.]

The above two annotations apply to 1979 c 155. For codification of that act, see Codification Tables, Volume 0.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.021 Juvenile court—How constituted—Cases tried without jury. (1) The juvenile court shall be a division of the superior court. In judicial districts having more than one judge of the superior court, the judges of such court shall annually assign one or more of their number to the juvenile court division. In any judicial district having a court commissioner, the court commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear all cases under this chapter and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050. In any judicial district having a family law commissioner appointed pursuant to chapter 26.12 RCW, the family law commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear cases under chapter 13.34 RCW and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050.

(2) Cases in the juvenile court shall be tried without a jury. [1988 c 232 § 3; 1979 c 155 § 2; 1977 ex.s. c 291 § 3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.030 Juvenile court—Exclusive original jurisdiction. The juvenile courts in the several counties of this state, shall have exclusive original jurisdiction over all proceedings:

(1) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(2) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170, as now or hereafter amended;

(3) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210, as now or hereafter amended;

(4) To approve or disapprove alternative residential placement as provided in RCW 13.32A.170;

(5) Relating to juveniles alleged or found to have committed offenses, traffic infractions, or violations as provided in RCW 13.40.020 through 13.40.230, as now or hereafter amended, unless:

(a) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110, as now or hereafter amended; or

(b) The statute of limitations applicable to adult prosecution for the offense, traffic infraction, or violation has expired; or

(c) The alleged offense or infraction is a traffic, fish, boating, or game offense or traffic infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or subsection (5)(a) of this section: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(6) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(7) Relating to termination of a diversion agreement under RCW 13.40.080 as now or hereafter amended, including a proceeding in which the divertee has attained eighteen years of age; and

(8) Relating to court validation of a voluntary consent to foster care placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized

Indian reservation over which the tribe exercises exclusive jurisdiction. [1988 c 14 § 1; 1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4; 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

Savings—1988 c 14: "Any court validation of a voluntary consent to relinquishment or adoption of an Indian child which was obtained in a juvenile court or superior court pursuant to chapter 26.33 RCW after July 25, 1987, and before June 9, 1988, shall be valid and effective in all respects." [1988 c 14 § 2.]

Severability—1987 c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 170 § 15.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Court commissioners: Chapter 2.24 RCW, state Constitution Art. 4 § 23.

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 65).

13.04.033 Appeal of court order—Procedure—Priority, when. (1) Any person aggrieved by a final order of the court may appeal the order as provided by this section. All appeals in matters other than those related to commission of a juvenile offense shall be taken in the same manner as in other civil cases. Except as otherwise provided in this title, all appeals in matters related to the commission of a juvenile offense shall be taken in the same manner as criminal cases and the right to collateral relief shall be the same as in criminal cases. The order of the juvenile court shall stand pending the disposition of the appeal: PROVIDED, That the court or the appellate court may upon application stay the order.

(2) If the final order from which an appeal is taken grants the custody of the child to, or withholds it from, any of the parties, or if the child is committed as provided under this chapter, the appeal shall be given priority in hearing.

(3) In the absence of a specific direction from the party seeking review to file the notice, or the court-appointed guardian ad litem, the court may dismiss the review pursuant to RAP 18.9. To the extent that this enactment [1990 c 284] conflicts with the requirements of RAP 5.3(a) or RAP 5.3(b) this enactment [1990 c 284] shall supersede the conflicting rule. [1990 c 284 § 35; 1979 c 155 § 4; 1977 ex.s. c 291 § 5.]

Rules of court: Rules of Appellate Procedure.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.035 Administrator of juvenile court, probation counselor, and detention services—Appointment. Juvenile court, probation counselor, and detention services shall be administered by the superior court, except that by local court rule and agreement with the legislative authority of the county they may be administered by the legislative authority of the county in the manner prescribed by RCW 13.20.060: PROVIDED, That in any county with a population of one million or more, such services shall be administered in accordance with chapter 13.20 RCW. The administrative body shall appoint an administrator of juvenile court, probation counselor, and detention services who shall be responsible for day-to-day administration of such services, and who may also serve in the capacity of a probation counselor. One person may, pursuant to the agreement of more than one administrative body, serve as administrator of more than one juvenile court. [1991 c 363 § 10; 1979 c 155 § 5; 1977 ex.s. c 291 § 6.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Prosecuting attorney as party to juvenile court proceedings—Exception, procedure: RCW 13.40.090.

13.04.037 Administrator—Adoption of standards for detention facilities for juveniles by—Revision and inspection. The administrator shall after consultation with the state planning agency established under Title II of the federal juvenile justice and delinquency prevention act of 1974 (P.L. No. 93-415; 42 U.S.C. 5611 et seq.) following a public hearing, and after approval of the body responsible for administering the juvenile court, and no later than one hundred eighty days after the effective date of this 1977 amendatory act, adopt standards for the regulation and government of detention facilities for juveniles. Such standards may be revised from time to time, according to the procedure outlined in this section. Each detention facility shall keep a copy of such standards available for inspection at all times. Such standards shall be reviewed and the detention facilities shall be inspected annually by the administrator. [1977 ex.s. c 291 § 7.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.040 Administrator—Appointment of probation counselors and persons in charge of detention facilities—Powers and duties, compensation—Collection of fines. The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to RCW 13.34.040, 13.34.180, and 13.40.070 as now or hereafter amended, and RCW 13.32A.150;

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, as now or hereafter amended, and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW 13.34.120 and 13.40.130, as now or hereafter amended, and be present at the disposition hearing to respond to questions regarding the predisposition study: PROVIDED, That such duties shall be performed by the department of social and health services for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department of social and health services unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative authority of the county, or in cases of joint counties, judicial districts of more than one county, or joint judicial districts such sums as shall be agreed upon by the legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080, as now or hereafter amended.

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(d) and (13) and for the payment of the fines into the county general fund. [1983 c 191 § 14; 1979 c 155 § 6; 1977 ex.s. c 291 § 8; 1959 c 331 § 9; 1951 c 270 § 1; 1921 c 43 § 1; 1913 c 160 § 3; RRS § 1987-3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.047 Administrator or staff—Health and dental examination and care—Consent. (1) The administrator of the juvenile court or authorized staff may consent as provided in this section to the provision of health and dental examinations and care, and necessary treatment for medical and dental conditions requiring prompt attention, for juveniles lawfully detained at or sentenced to a detention facility. The treatment may include treatment provided at medical or dental facilities outside the juvenile detention facility and treatment provided within the juvenile detention facility for the period of time the youth is in the custody of the facility. Juveniles shall not be transported for treatment outside the facility if treatment services are available within the facility.

(2) The examination, care, and treatment may be provided without parental consent when prompt attention is required if the administrator of the juvenile court or authorized staff have been unable to secure permission for treatment from the parent or parents, guardian, or other person having custody of the child after reasonable attempts to do so before the provision of the medical and dental services.

(3) Treatment shall not be authorized for juveniles whose parent or parents, guardian, or other person having custody of the child informs the administrator of the juvenile court of objections to the treatment before the treatment is provided except where *RCW 69.54.060 applies. [1983 c 267 § 2.]

***Reviser's note:** RCW 69.54.060 was repealed by 1989 c 270 § 35.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

13.04.050 Expenses of probation officers. The probation officers, and assistant probation officers, and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court, and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses. [1913 c 160 § 4; RRS § 1987-4.]

13.04.093 Hearings—Duties of prosecuting attorney or attorney general, when. It shall be the duty of the prosecuting attorney to act in proceedings relating to the commission of a juvenile offense as provided in RCW 13.40.070 and 13.40.090 and in proceedings as provided in chapter 71.34 RCW. It shall be the duty of the prosecuting attorney to handle delinquency cases under chapter 13.24 RCW and it shall be the duty of the attorney general to handle dependency cases under chapter 13.24 RCW. It shall be the duty of the attorney general in contested cases brought by the department to present the evidence supporting any petition alleging dependency or seeking the termination of a parent and child relationship or any contested case filed under RCW 26.33.100 or approving or disapproving alternative residential placement: PROVIDED, That in each county with a population of less than two hundred ten thousand, the attorney general may contract with the prosecuting attorney of the county to perform said duties of the attorney general. [1991 c 363 § 11; 1985 c 354 § 30; 1985 c 7 § 4; 1979 ex.s. c 165 § 6; 1977 ex.s. c 291 § 9.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. (1) A juvenile shall not be confined in a jail or holding facility for adults, except:

(a) For a period not exceeding twenty-four hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an

adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

(b) For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

(2) For purposes of this section a juvenile is an individual under the chronological age of eighteen years who has not been transferred previously to adult courts.

(3) The department of social and health services shall monitor and enforce compliance with this section.

(4) This section shall not be construed to expand or limit the authority to lawfully detain juveniles. [1987 c 462 § 1; 1985 c 50 § 1.]

Effective dates—1987 c 462: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions. Sections 15 and 21 of this act shall take effect immediately. Sections 1 through 11 and sections 16, 17, 22 and 23 of this act shall take effect January 1, 1988." [1987 c 462 § 24.] For codification of 1987 c 462, see Codification Tables, Volume 0.

Places of detention: Chapter 13.16 RCW.

Transfer of juvenile to department of corrections facility: RCW 13.40.280.

13.04.135 Establishment of house or room of detention. Counties containing more than fifty thousand inhabitants shall, and counties containing a lesser number of inhabitants may, provide and maintain at public expense, a detention room or house of detention, separated or removed from any jail, or police station, to be in charge of a matron, or other person of good character, wherein all children within the provisions of this chapter shall, when necessary, be sheltered. [1983 c 98 § 2; 1945 c 121 § 1; 1913 c 160 § 13; Rem. Supp. 1945 1987-13. Formerly RCW 13.16.010.]

Detention in facility under jurisdiction of juvenile court—Financial responsibility for cost of detention: RCW 13.34.170, 13.16.085.

13.04.145 Educational program for juveniles in detention facilities. A program of education shall be provided for by the several counties and school districts of the state for common school age persons confined in each of the detention facilities staffed and maintained by the several counties of the state under this chapter and chapters 13.16 and 13.20 RCW. The division of duties, authority, and liabilities of the several counties and school districts of the state respecting the educational programs is the same in all respects as set forth in RCW 28A.190.030 through 28A.190.060 respecting programs of education for state residential school residents. For the purposes of this section, the terms "department of social and health services," "residential school" or "schools," and "superintendent or chief administrator of a residential school" as used in RCW 28A.190.030 through 28A.190.060 shall be respectively construed to mean "the several counties of the state," "detention facilities," and "the administrator of juvenile court detention services." Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180. [1990 c 33 § 551; 1983 c 98 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Juvenile facilities, educational programs: RCW 28A.190.010.

13.04.160 Fees not allowed. No fees shall be charged or collected by any officer or other person for filing petition, serving summons, or other process under this chapter. [1913 c 160 § 16; RRS § 1987-16.]

13.04.180 Board of visitation. In each county, the judge presiding over the juvenile court sessions, as defined in this chapter, may appoint a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this chapter, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court: PROVIDED, The actual expenses of such board may be paid by the county commissioners when members thereof are requested to visit institutions outside of the county seat, and no member of the board shall be required to visit any institutions outside the county unless his actual traveling expenses shall be paid as aforesaid. Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, societies, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court. [1913 c 160 § 18; RRS § 1987-18.]

13.04.240 Court order not deemed conviction of crime. An order of court adjudging a child delinquent or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime. [1961 c 302 § 16. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part.]

13.04.300 Juvenile may be both dependent and an offender. Nothing in chapter 13.04, 13.06, 13.32A, 13.34, or 13.40 RCW may be construed to prevent a juvenile from being found both dependent and an offender if there exists a factual basis for such a finding. [1983 c 3 § 15; 1979 c 155 § 14.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.04.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders—Chapter 10.22 RCW does not apply to proceedings under chapter 13.40 RCW. The provisions of chapters 13.04 and 13.40 RCW, as now or hereafter amended, shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided. Chapter 10.22 RCW does not apply to

juvenile offender proceedings, including diversion, under chapter 13.40 RCW. [1985 c 257 § 5; 1981 c 299 § 20.]

Severability—1985 c 257: See note following RCW 13.34.165.

13.04.460 Implementation and enforcement of juvenile justice laws—Reports. The legislature finds that there is evidence of failure to implement and enforce juvenile justice laws. This failure may be due to a number of factors, including, but not necessarily limited to, resource limitations within the various units of government charged with responsibility for such implementation and enforcement.

Therefore, commencing with April 4, 1986, and continuing through such time as further legislative direction is enacted into law, any person legally responsible for implementation or enforcement of any provision of chapter 13.04, 13.32A, 13.34, or 74.13 RCW who is unable to implement or enforce any such provision shall file a report on the situation as soon as possible with the oversight committee created under *section 3 of this act or, if the oversight committee has ceased to exist, to the judiciary committees of the house of representatives and the senate. Any such report shall include a documented description of the situation and the reason or reasons for failure to implement or enforce the provision in question.

Nothing contained in this section is intended to limit criminal or civil liability or to protect any employee against possible disciplinary action for failure to perform his or her duties. [1986 c 288 § 4.]

***Select legislative committee—1986 c 288 § 3:** "There shall be created a joint select legislative committee to review the implementation and administration of:

(1) Chapter 13.04 RCW, the basic juvenile court act;

(2) Chapter 13.32A RCW, procedures for families in conflict generally, and specifically review the alternative residential placement process and the advisability of granting the juvenile court jurisdiction to make in-house placements. The committee shall consider the establishment of a residential school to address the needs of children who, pursuant to law, may be ordered into an alternative residential placement. A residential school may be funded and operated, in whole or in part by private contributions;

(3) Chapter 13.34 RCW, the juvenile court act relating to dependency of a child and the termination of a parent and child relationship; and

(4) Chapter 74.13 RCW, child welfare services.

The joint select legislative committee shall be composed of bipartisan members of the house and senate judiciary committee to be selected at the discretion of the committee chairpersons.

The committee established under this section shall meet and conduct hearings as often as is necessary to carry out its responsibilities under this chapter.

In reviewing the implementation and administration of chapters 13.04, 13.32A, 13.34, and 74.13 RCW the joint select legislative committee may inquire into instances where it is alleged that a law enforcement officer, school employee, department employee, judge, or juvenile court employee has either misrepresented a provision of the cited chapters or has failed to follow any such provision.

The joint select legislative committee shall be granted access to all relevant information necessary to monitor behavior of agencies and/or employees: PROVIDED, That any confidential information shall be kept confidential by members of the committee and shall not be further disseminated unless specifically authorized by state or federal law.

The joint select legislative committee shall report its findings and make recommendations regarding implementation of the chapters cited in this section in a report submitted to the legislature before the 1988 regular session of the legislature.

The joint select legislative committee, unless recreated by the legislature, shall cease to exist after submitting the report required under this section." [1986 c 288 § 3.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Chapter 13.06

JUVENILE OFFENDERS—CONSOLIDATED JUVENILE SERVICES PROGRAMS

(Formerly: Probation services—Special supervision programs)

Sections

Juvenile may be both dependent and an offender: RCW 13.04.300.

13.06.010 Intention. It is the intention of the legislature in enacting this chapter to increase the protection afforded the citizens of this state, to require community planning, to provide necessary services and supervision for juvenile offenders in the community when appropriate, to reduce reliance on state-operated correctional institutions for offenders whose standard range disposition does not include commitment of the offender to the department, and to encourage the community to efficiently and effectively provide community services to juvenile offenders through consolidation of service delivery systems. [1983 c 191 § 1; 1969 ex.s. c 165 § 1.]

Effective date—1969 ex.s. c 165: "This act shall become effective on July 1, 1969." [1969 ex.s. c 165 § 7.] This act [1969 ex.s. c 165] consists of the enactment of chapter 13.06 RCW.

13.06.020 State to share in cost. From any state moneys made available for such purpose, the state of Washington, through the department of social and health services, shall, in accordance with this chapter and applicable departmental rules, share in the cost of providing services to juveniles. [1983 c 191 § 2; 1979 c 141 § 13; 1969 ex.s. c 165 § 2.]

13.06.030 Rules—Standards—"Consolidated juvenile services" defined. The department of social and health services shall adopt rules prescribing minimum standards for the operation of consolidated juvenile services programs for juvenile offenders and such other rules as may be necessary for the administration of the provisions of this chapter. Consolidated juvenile services is a mechanism through which the department of social and health services supports local county comprehensive program plans in providing services to offender groups. Standards shall be sufficiently flexible to support current programs which have demonstrated effectiveness and efficiency, to foster development of innovative and improved services for juvenile offenders, to permit direct contracting with private vendors, and to encourage community support for and assistance to local programs. The secretary of social and health services shall seek advice from appropriate juvenile justice system participants in developing standards and procedures for the operation of consolidated juvenile services programs and the distribution of funds under this chapter. [1983 c 191 § 3; 1979 c 141 § 14; 1969 ex.s. c 165 § 3.]

13.06.040 Application by county or counties for state financial aid. Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department for financial aid for the cost of consolidated juvenile services programs. Any such application must include a plan or plans for providing consolidated services to juvenile offenders in accordance with standards of the department. [1983 c 191 § 4; 1979 c 141 § 15; 1969 ex.s. c 165 § 4.]

13.06.050 Conditions for receiving state funds—Criteria for distribution of funds. No county shall be entitled to receive any state funds provided by this chapter until its application and plan are approved, and unless and until the minimum standards prescribed by the department of social and health services are complied with and then only on such terms as are set forth in this section.

(1) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs. [1983 c 191 § 5; 1979 c 151 § 9; 1977 ex.s. c 307 § 1; 1973 1st ex.s. c 198 § 1; 1971 ex.s. c 165 § 1; 1969 ex.s. c 165 § 5.]

Effective date—1977 ex.s. c 307: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 307 § 3.].

Effective date—1973 1st ex.s. c 198: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 198 § 3.]

13.06.055 Housing authorities law—Group homes or halfway houses for released juveniles or developmentally disabled. See RCW 35.82.285.

Chapter 13.16
PLACES OF DETENTION

Sections

Child
welfare agencies: Chapter 74.15 RCW.
welfare services: Chapter 74.13 RCW.

County juvenile detention facilities—Policy—Detention and risk assessment standards: RCW 13.40.038.

Employment of dental hygienist without supervision of a dentist authorized: RCW 18.29.056.

13.16.010 Establishment of house or room of detention. See RCW 13.04.135.

13.16.020 Lack of detention facilities constitutes emergency. The attention of the legislature having been called to the absence of juvenile detention facilities in the various counties of the state, the legislature hereby declares that this situation constitutes an emergency demanding the invocation by the several counties affected of the emergency powers granted by virtue of RCW 36.40.140 through 36.40.200. [1945 c 188 § 1; Rem. Supp. 1945 § 2004-1.]

13.16.030 Mandatory function of counties. The construction, acquisition and maintenance of juvenile detention facilities for dependent, wayward and delinquent children, separate and apart from the detention facilities for adults, is hereby declared to be a mandatory function of the several counties of the state. [1945 c 188 § 2; Rem. Supp. 1945 § 2004-2.]

13.16.040 Counties authorized to acquire facilities and employ adequate staffs. Boards of county commissioners in the various counties now suffering from a lack of adequate detention facilities for dependent, delinquent and wayward children shall, in the manner provided by law, declare an emergency and appropriate, in the manner provided by law, sufficient funds to meet all demands for adequate care of dependent, delinquent and wayward children. All appropriations made under the provisions of RCW 13.16.020 through 13.16.080 are to be used exclusively for the acquisition, purchase, construction or leasing of real and personal property and the employment and payment of salaries for an adequate staff of juvenile officers and necessary clerical staff and assistants and for furnishing suitable food, clothing and recreational facilities for dependent, delinquent and wayward children. [1945 c 188 § 3; Rem. Supp. 1945 § 2004-3.]

13.16.050 Federal or state aid. In connection with the financing of facilities and the employment of a staff of juvenile officers for dependent, delinquent and wayward children, the various boards of county commissioners affected shall attempt to secure such advances, loans, grants in aid, donations as gifts as may be secured from the federal government or any of its agencies or from the state government or from other public or private institutions or individuals. [1945 c 188 § 4; Rem. Supp. 1945 § 2004-4.]

13.16.060 Statutory debt limits may be exceeded. Appropriations made under authority and by virtue of RCW 13.16.020 through 13.16.080 and debts incurred by any

county in carrying out the provisions of RCW 13.16.020 through 13.16.080 may exceed all statutory limitations otherwise applicable and limiting the debt any county may incur. [1945 c 188 § 5; Rem. Supp. 1945 § 2004-5.]

13.16.070 Bonds may be issued without vote of electors. In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the several counties affected shall utilize any and all methods available to them by law for financing the program authorized by RCW 13.16.020 through 13.16.080 and may fund any and all debts incurred by the issuance of general obligation bonds of the county in the manner provided by law, without submitting the same to a vote of the people. [1945 c 188 § 6; Rem. Supp. 1945 § 2004-6.]

13.16.080 Allocation of budgeted funds. In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the board of county commissioners is hereby authorized, any law to the contrary notwithstanding, to allocate any funds that may be available in any item or class of the budget as presently constituted to the fund to be used to carry out the provisions of RCW 13.16.020 through 13.16.080. [1945 c 188 § 7; Rem. Supp. 1945 § 2004-7.]

13.16.085 Financial responsibility for cost of detention. In any case in which a child under eighteen years of age has been placed in any detention facility under the jurisdiction of the juvenile court, the court may inquire into the facts concerning the necessity or propriety of such child's detention notwithstanding the fact that such child may not have been found to be either a dependent or a delinquent child.

The court may, either in the proceedings involving the question of dependency or delinquency of such child or in a separate proceeding, upon the parent or parents, guardian, or other person having custody of said child being duly summoned or voluntarily appearing, proceed to inquire into the necessity or propriety of such detention and into the ability of such person or persons to pay the cost of such detention.

If the court finds that such detention was necessary or proper for the welfare of the child or for the protection of the community, and if the court also finds the parent or parents, guardian, or other person having the custody of such child able to pay or contribute to the payment of the cost of such detention, the court may enter such order or decree as shall be equitable in the premises, and may enforce the same by execution or in any way a court of equity may enforce its decrees. [1955 c 369 § 1.]

Basic juvenile court act: Chapter 13.04 RCW.

13.16.090 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. See RCW 13.04.116.

Chapter 13.20

MANAGEMENT OF DETENTION FACILITIES—COUNTIES WITH POPULATIONS OF ONE MILLION OR MORE

(Formerly: Management of detention facilities—Class AA counties)

Sections

Employment of dental hygienist without supervision of a dentist authorized: RCW 18.29.056.

Places of detention: Chapter 13.16 RCW.

Places of detention—Basic juvenile court act: Chapter 13.04 RCW.

13.20.010 Board of managers—Appointment authorized—Composition. The judges of the superior court of any county with a population of one million or more are hereby authorized, by majority vote, to appoint a board of managers to administer, subject to the approval and authority of such superior court, the probation and detention services for dependent and delinquent children coming under the jurisdiction of the juvenile court.

Such board shall consist of four citizens of the county and the judge who has been selected to preside over the juvenile court. [1991 c 363 § 12; 1955 c 232 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

13.20.020 Terms of office—Removal—Vacancies. The nonjudicial members of the board first appointed shall be appointed for the respective terms of one, two, three, and four years and until their successors are appointed and qualified; and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified.

Any such member of the board may be removed at any time by majority vote of the judges of the superior court.

Vacancies on the board may be filled at any time by majority vote of said judges, and such appointee shall hold office for the remainder of the term of the member in whose stead he was appointed. [1955 c 232 § 2.]

13.20.030 Chairman—Quorum—Organization—Rules of procedure. The judicial member of the board shall be the chairman thereof; a majority thereof shall constitute a quorum for the transaction of business; and the board shall have authority to organize itself in such manner and to establish such rules of procedure as it deems proper for the performance of its duties. [1955 c 232 § 3.]

13.20.040 Powers and duties of board. The juvenile court board of managers shall:

(1) Have general supervision and care of all physical structures and grounds connected with the rendition of probation and detention services and power to do everything

necessary to the proper maintenance thereof within the limits of the appropriations authorized.

(2) Subject to the approval and authority of said superior court, the board of managers shall have authority and power to determine the type and extent of probation and detention services to be conducted in connection with the juvenile court, and authority over all matters concerning employment, job classifications, salary scales, qualifications, and number of personnel necessarily involved in the rendition of probation and detention services.

(3) Prepare, in accordance with the provisions of the county budget law, and file with the county auditor a detailed and itemized estimate, both of probable revenues from sources other than taxation and of all expenditures required for the rendition of the services under the jurisdiction of said board.

(4) Prepare and file with the superior court on July 1st of each year, and at such other times and in such form as the court shall require, a report of its operations. [1955 c 232 § 4.]

13.20.050 Compensation of members. No member of the board shall receive any compensation or emolument whatever for services as such board member. [1955 c 232 § 5.]

13.20.060 Transfer of administration of juvenile court services to county executive—Authorized—Advisory board—Procedure. In addition, and alternatively, to the authority granted by RCW 13.20.010, the judges of the superior court of any county with a population of one million or more operating under a county charter providing for an elected county executive are hereby authorized, by a majority vote, subject to approval by ordinance of the legislative authority of the county to transfer to the county executive the responsibility for, and administration of all or part of juvenile court services, including detention, intake and probation. The superior court and county executive of such county are further authorized to establish a five-member juvenile court advisory board to advise the county in its administration of such services, facilities and programs. If the advisory board is established, two members of the advisory board shall be appointed by the superior court, two members shall be appointed by the county executive, and one member shall be selected by the vote of the other four members. The county is authorized to contract or otherwise make arrangements with other public or private agencies to provide all or a part of such services, facilities and programs. Subsequent to any transfer to the county of responsibility and administration of such services, facilities and programs pursuant to the foregoing authority, the judges of such superior court, by majority vote subject to the approval by ordinance of the legislative authority of the county, may retransfer the same to the superior court. [1991 c 363 § 13; 1975 1st ex.s. c 124 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 13.24
INTERSTATE COMPACT ON JUVENILES

Sections

13.24.010 Execution of compact. The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

ARTICLE I—Findings and Purposes

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(1) Cooperative supervision of delinquent juveniles on probation or parole;

(2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;

(3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and

(4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II—Existing Rights and Remedies

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III—Definitions

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an

order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV—Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located, a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V—Return of Escapees and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the

name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI—Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV (a) or of article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII—Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other

available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII—Responsibility for Costs

(a) That the provisions of articles IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV (b), V (b) or VII (d) of this compact.

ARTICLE IX—Detention Practices

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X—Supplementary Agreements

That the duly constituted administrative authorities, of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) Provide for reasonable inspection of such institutions by the sending state;

(6) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI—Acceptance of Federal and Other Aid

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII—Compact Administrators

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII—Execution of Compact

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV—Renunciation

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

ARTICLE XV—Severability

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1955 c 284 § 1.]

13.24.020 Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder. [1955 c 284 § 2.]

13.24.030 Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1955 c 284 § 3.]

13.24.035 Governor authorized and directed to execute supplementary compact—Contents. (1) The governor is hereby authorized and directed to execute a compact amending and supplementing the interstate compact on juveniles on behalf of this state with any other state or states legally joining therein in the form substantially as set forth in subsection (2) of this section.

(2)(a) All provisions and procedures of Articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

(b) This amendment provides additional remedies and shall be binding only as among and between those party states which substantially execute the same. [1979 c 155 § 36.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.24.040 Financial arrangements. The compact administrator, subject to the approval of the office of financial management, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1979 ex.s. c 86 § 1; 1955 c 284 § 4.]

Severability—1979 ex.s. c 86: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 86 § 9.] For codification of 1979 ex.s. c 86, see Codification Tables, Volume 0.

13.24.050 Fees. Any judge of this state who appoints counsel or guardian ad litem pursuant to the provision of the compact may, in his discretion, fix a fee to be paid out of funds available for disposition by the court but no such fee shall exceed twenty-five dollars. [1955 c 284 § 5.]

13.24.060 Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. [1955 c 284 § 6.]

13.24.900 Short title. This chapter may be cited as the "uniform interstate compact on juveniles." [1955 c 284 § 7.]

Chapter 13.32A
FAMILY RECONCILIATION ACT
(Formerly: Procedures for families in conflict)

Sections

Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict: RCW 43.20A.770.

Family preservation services: Chapter 74.14C RCW.

Foster placement prevention: Chapter 74.14C RCW.

Implementation of chapters 13.32A and 13.34 RCW—Report to local governments: RCW 74.13.036.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Services for families-in-conflict: RCW 74.14A.020.

Transitional treatment program for gang and drug-involved juvenile offenders: RCW 13.40.310.

13.32A.010 Legislative findings and declaration. The legislature finds that within any group of people there exists a need for guidelines for acceptable behavior and that, presumptively, experience and maturity are better qualifications for establishing guidelines beneficial to and protective of individual members and the group as a whole than are youth and inexperience. The legislature further finds that it is the right and responsibility of adults to establish laws for the benefit and protection of the society; and that, in the same manner, the right and responsibility for establishing reasonable guidelines for the family unit belongs to the adults within that unit. The legislature reaffirms its position stated in RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that it should remain intact in the absence of compelling evidence to the contrary. [1979 c 155 § 15.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.020 Short title. This chapter shall be known and may be cited as the family reconciliation act. [1990 c 276 § 2; 1979 c 155 § 16.]

Intent—1990 c 276: "It is the intent of the legislature to:

(1) Preserve, strengthen, and reconcile families experiencing problems with at-risk youth;

(2) Provide a legal process by which parents who are experiencing problems with at-risk youth can request and receive assistance from juvenile courts in providing appropriate care, treatment, and supervision to such youth; and

(3) Assess the effectiveness of the family reconciliation services program.

The legislature does not intend by this enactment to grant any parent the right to file an at-risk youth petition or receive juvenile court assistance in dealing with an at-risk youth. The purpose of this enactment is to create a process by which a parent of an at-risk youth may request and receive assistance subject to the availability of juvenile court services and resources. Recognizing that these services and resources are limited, the legislature intends that counties have the authority to impose reasonable limits on the utilization of juvenile court services and resources in matters related to at-risk youth. Any responsibilities imposed upon the department under this act shall be contingent upon the availability of funds specifically appropriated by the legislature for such purpose." [1990 c 276 § 1.]

Conflict with federal requirements—1990 c 276: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1990 c 276 § 19.]

Severability—1990 c 276: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 276 § 20.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.030 Definitions—Regulating leave from semi-secure facility. As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Department" means the department of social and health services;

(2) "Child," "juvenile," and "youth" mean any individual who is under the chronological age of eighteen years;

(3) "Parent" means the legal custodian(s) or guardian(s) of a child;

(4) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away: PROVIDED, That such facility shall not be a secure institution or facility as defined by the federal juvenile justice and delinquency prevention act of 1974 (P.L. 93-415; 42 U.S.C. Sec. 5634 et seq.) and regulations and clarifying instructions promulgated thereunder. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center. The facility administrator shall notify a parent and the appropriate law enforcement agency within four hours of all unauthorized leaves;

(5) "At-risk youth" means an individual under the chronological age of eighteen years who:

(a) Is absent from home for more than seventy-two consecutive hours without consent of his or her parent;

(b) Is beyond the control of his or her parent such that the child's behavior substantially endangers the health, safety, or welfare of the child or any other person; or

(c) Has a serious substance abuse problem for which there are no pending criminal charges related to the substance abuse. [1990 c 276 § 3; 1985 c 257 § 6; 1979 c 155 § 17.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.040 Family reconciliation services—Request for—Scope. Families who are in conflict or who are experiencing problems with at-risk youth may request family reconciliation services from the department. Such services shall be provided to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the child or family and to maintain families intact wherever possible. Family reconciliation services shall be designed to develop skills and supports within families to resolve problems related to at-risk youth or family conflicts and may include but are not limited to referral to services for suicide prevention, psychiatric or other medical care, or psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the child and the family. [1990 c 276 § 4; 1981 c 298 § 1; 1979 c 155 § 18.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 298 § 20.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.050 Officer taking child into custody—When authorized—Maximum time of custody—Notice to department, when. A law enforcement officer shall take a child into custody:

(1) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

(2) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety; or

(3) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

(4) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued pursuant to chapter 13.32A RCW or that the court has issued an order for law enforcement pick-up of the child under this chapter.

Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination.

An officer who takes a child into custody under this section and places the child in a designated crisis residential center shall inform the department of such placement within twenty-four hours.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law. [1990 c 276 § 5; 1986 c 288 § 1; 1985 c 257 § 7; 1981 c 298 § 2; 1979 c 155 § 19.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1986 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 288 § 13.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.060 Officer taking child into custody—Procedure—Transporting to home or crisis residential center. (1) An officer taking a child into custody under RCW 13.32A.050 (1) or (2) shall inform the child of the reason for such custody and shall either:

(a) Transport the child to his or her home. The officer releasing a child into the custody of the parent shall inform the parent of the reason for the taking of the child into custody and shall inform the child and the parent of the nature and location of appropriate services available in their community; or

(b) Take the child to a designated crisis residential center or the home of a responsible adult:

(i) If the child evinces fear or distress at the prospect of being returned to his or her home; or

(ii) If the officer believes there is a possibility that the child is experiencing in the home some type of child abuse or neglect, as defined in RCW 26.44.020, as now law or hereafter amended; or

(iii) If it is not practical to transport the child to his or her home; or

(iv) If there is no parent available to accept custody of the child.

The officer releasing a child into the custody of a responsible adult shall inform the child and the responsible adult of the nature and location of appropriate services available in the community.

(2) An officer taking a child into custody under RCW 13.32A.050 (3) or (4) shall inform the child of the reason for custody, and shall take the child to a designated crisis residential center licensed by the department and established pursuant to chapter 74.13 RCW. However, an officer taking a child into custody under RCW 13.32A.050(4) may place the child in a juvenile detention facility as provided in RCW 13.32A.065. The department shall ensure that all the enforcement authorities are informed on a regular basis as to the location of the designated crisis residential center or centers in their judicial district, where children taken into custody under RCW 13.32A.050 may be taken. [1985 c 257 § 8; 1981 c 298 § 3; 1979 c 155 § 20.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.065 Officer taking child into custody—Placing in detention—Detention review hearing—Hearing on contempt. (1) A child may be placed in detention after being taken into custody pursuant to RCW 13.32A.050(4). The court shall hold a detention review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court orders the child to remain in detention, the court shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays. [1981 c 298 § 4.]

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.070 Officer taking child into custody—Transporting to home other than of parent—Immunity from liability. (1) An officer taking a child into custody under RCW 13.32A.050 may, at his or her discretion, transport the child to the home of a responsible adult who is other than the child's parent where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in the custody of such adult until such time as the department can bring about the child's return home or an alternative residential placement can be agreed to or determined pursuant to this chapter. An officer placing a child with a responsible adult other than his or her parent shall immediately notify the department's local community service office of this fact and of the reason for taking the child into custody.

(2) A law enforcement officer acting in good faith pursuant to this chapter in failing to take a child into custody, in taking a child into custody, or in releasing a child to a person other than a parent of such child is immune from civil or criminal liability for such action.

(3) A person other than a parent of such child who receives a child pursuant to this chapter and who acts reasonably and in good faith in doing so is immune from civil or criminal liability for the act of receiving such child. Such immunity does not release such person from liability under any other law including the laws regulating licensed child care and prohibiting child abuse. [1986 c 288 § 2; 1981 c 298 § 5; 1979 c 155 § 21.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.080 Unlawful harboring of a minor—Penalties—Defense—Prosecution of adult for involving child in commission of offense. (1)(a) A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:

(i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or

(ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or

(iii) Obstructs a law enforcement officer from taking the minor into custody; or

(iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

(b) It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.

(2) Harboring a minor is punishable as a misdemeanor if the offender has not been previously convicted under this section and a gross misdemeanor if the offender has been previously convicted under this section.

(3) Any person who provides shelter to a child, absent from home, may notify the department's local community service office of the child's presence.

(4) An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:

(a) Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;

(b) Promoting prostitution as defined in chapter 9A.88 RCW; and

(c) Complicity of the adult in the crime of a minor, under RCW 9A.08.020. [1981 c 298 § 6; 1979 c 155 § 22.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.090 Duty to inform parents of child's whereabouts, condition and reconciliation procedure—Transportation to child's home or alternative residence. (1) The person in charge of a designated crisis residential center or the department pursuant to RCW 13.32A.070 shall perform the duties under subsection (2) of this section:

(a) Upon admitting a child who has been brought to the center by a law enforcement officer under RCW 13.32A.060;

(b) Upon admitting a child who has run away from home or has requested admittance to the center;

(c) Upon learning from a person under RCW 13.32A.080(3) that the person is providing shelter to a child absent from home; or

(d) Upon learning that a child has been placed with a responsible adult pursuant to RCW 13.32A.070.

(2) When any of the circumstances under subsection (1) of this section are present, the person in charge of a center shall perform the following duties:

(a) Immediately notify the child's parent of the child's whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement;

(b) Initially notify the parent that it is the paramount concern of the family reconciliation service personnel to achieve a reconciliation between the parent and child to reunify the family and inform the parent as to the procedures to be followed under this chapter;

(c) Inform the parent whether a referral to children's protective services has been made and, if so, inform the parent of the standard pursuant to RCW 26.44.020(12) governing child abuse and neglect in this state;

(d) Arrange transportation for the child to the residence of the parent, as soon as practicable, at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses to be assumed by the department, when the child and his or her parent agrees to the child's return home or when the parent produces a copy of a court order entered under this chapter requiring the child to reside in the parent's home;

(e) Arrange transportation for the child to an alternative residential placement which may include a licensed group care facility or foster family when agreed to by the child and parent at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses assumed by the department. [1990 c 276 § 6; 1981 c 298 § 7; 1979 c 155 § 23.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.100 Family reconciliation services for child in alternative residential placement. Where a child is placed in a residence other than that of his or her parent pursuant to RCW 13.32A.090(2)(e), the department shall make available family reconciliation services in order to facilitate the reunification of the family. Any such placement may continue as long as there is agreement by the child and parent. [1981 c 298 § 8; 1979 c 155 § 24.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.110 Interstate compact to apply, when. If a child who has a legal residence outside the state of Washington is admitted to a crisis residential center or is placed by a law enforcement officer with a responsible person other than the child's parent, and the child refuses to return home, the provisions of RCW 13.24.010 shall apply. [1979 c 155 § 25.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Interstate compact on juveniles: Chapter 13.24 RCW.

13.32A.120 Alternative residential placement—Agreement to continue—Petition to approve. (1) Where either a child or the child's parent or the person or facility currently providing shelter to the child notifies the center that such individual or individuals cannot agree to the continuation of an alternative residential placement arrived at pursuant to RCW 13.32A.090(2)(e), the center shall immediately contact the remaining party or parties to the agreement and shall attempt to bring about the child's return home or to an alternative living arrangement agreeable to the child and the parent as soon as practicable.

(2) If a child and his or her parent cannot agree to an alternative residential placement under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a petition to approve an alternative residential placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter.

(3) If a child and his or her parent cannot agree to the continuation of an alternative residential placement arrived at under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a petition to approve an alternative residential placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter. [1990 c 276 § 7; 1979 c 155 § 26.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.130 Child admitted to crisis residential center—Maximum hours of custody—Reconciliation effort—Information to parents upon retaining custody—Written statement of services and rights. A child admitted to a crisis residential center under this chapter who is not returned to the home of his or her parent or who is not placed in an alternative residential placement under an agreement between the parent and child, shall, except as provided for by RCW 13.32A.140 and 13.32A.160(2), reside in such placement under the rules and regulations established for the center for a period not to exceed five consecutive days from the time of intake, except as otherwise provided by this chapter. Crisis residential center staff shall make a

concerted effort to achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours from the time of intake, and if the person in charge of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the person in charge shall inform the parent and child of (1) the availability of counseling services; (2) the right to file a petition for an alternative residential placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; and (3) the right to request a review of any alternative residential placement: PROVIDED, That at no time shall information regarding a parent's or child's rights be withheld if requested: PROVIDED FURTHER, That the department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating such services and rights. Every officer taking a child into custody shall provide the child and his or her parent(s) or responsible adult with whom the child is placed with a copy of such statement. In addition, the administrator of the facility or his or her designee shall provide every resident and parent with a copy of such statement. [1992 c 205 § 206; 1990 c 276 § 8; 1985 c 257 § 9; 1981 c 298 § 9; 1979 c 155 § 27.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.140 Alternative residential placement—Department to file petition for, when—Procedure. The department shall file a petition to approve an alternative residential placement on behalf of a child under any of the following sets of circumstances:

(1) The child has been admitted to a crisis residential center or has been placed with a responsible person other than his or her parent, and:

(a) The parent has been notified that the child was so admitted or placed;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No agreement between the parent and the child as to where the child shall live has been reached;

(d) No petition requesting approval of an alternative residential placement has been filed by either the child or parent or legal custodian;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

(2) The child has been admitted to a crisis residential center and:

(a) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

(b) The staff, after searching with due diligence, have been unable to contact the parent of such child; and

(c) The child has no suitable place to live other than the home of his or her parent.

(3) An agreement between parent and child made pursuant to RCW 13.32A.090(2)(e) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, and:

(a) The party to whom the arrangement is no longer acceptable has so notified the department;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No new agreement between parent and child as to where the child shall live has been reached;

(d) No petition requesting approval of an alternative residential placement has been filed by either the child or the parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

Under the circumstances of subsections (1), (2), or (3) of this section, the child shall remain in a licensed child care facility, including but not limited to a crisis residential center, or in any other suitable residence to be determined by the department until an alternative residential placement petition filed by the department on behalf of the child is reviewed by the juvenile court and is resolved by such court. The department may authorize emergency medical or dental care for a child placed under this section. The state, when the department files a petition for alternative residential placement under this section, shall be represented as provided for in RCW 13.04.093. [1990 c 276 § 9; 1981 c 298 § 10; 1979 c 155 § 28.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.150 Alternative residential placement—Petition by child or parent. (1) Except as otherwise provided in this section the juvenile court shall not accept the filing of an alternative residential placement petition by the child or the parents or the filing of an at-risk youth petition by the parent, unless verification is provided that a family assessment has been completed by the department. The family assessment shall be aimed at family reconciliation and avoidance of the out-of-home placement of the child. If the department is unable to complete an assessment within two working days following a request for assessment the child or the parents may proceed under subsection (2) of this section or the parent may proceed under subsection (3) of this section.

(2) A child or a child's parent may file with the juvenile court a petition to approve an alternative residential placement for the child outside the parent's home. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition shall only ask that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve such placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an alternative residential placement.

(3) A child's parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth. The department shall, when requested, assist the parent in filing the petition. The petition shall be filed in the county where the petitioning parent resides. The petition shall set forth the name, age, and residence of the child and the names and residence of the child's parents and shall allege that:

(a) The child is an at-risk youth as defined in this chapter;

(b) The petitioning parent has the right to legal custody of the child;

(c) Court intervention and supervision are necessary to assist the parent to maintain the care, custody, and control of the child; and

(d) Alternatives to court intervention have been attempted or there is good cause why such alternatives have not been attempted.

The petition shall set forth facts that support the allegations in this subsection and shall generally request relief available under this chapter. The petition need not specify any proposed disposition following adjudication of the petition. The filing of an at-risk youth petition is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent and confers upon the court the special jurisdiction to assist the parent in maintaining parental authority and responsibility for the child. An at-risk youth petition may not be filed if the court has approved an alternative residential placement petition regarding the child or if the child is the subject of a proceeding under chapter 13.34 RCW. A petition may be accepted for filing only if alternatives to court intervention have been attempted. Juvenile court personnel may screen all at-risk youth petitions and may refuse to allow the filing of any petition that lacks merit, fails to comply with the requirements of this section, or fails to allege sufficient facts in support of allegations in the petition. [1992 c 205 § 208; 1990 c 276 § 10; 1989 c 269 § 1; 1981 c 298 § 11; 1979 c 155 § 29.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.160 Alternative residential placement—Court action upon filing of petition—Child placement. (1) When a proper petition to approve an alternative residential placement is filed under RCW 13.32A.120, 13.32A.140, or 13.32A.150 the juvenile court shall: (a) Schedule a date for a fact-finding hearing; notify the parent, child, and the department of such date; (b) notify the parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving an alternative residential placement petition; and (e) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of an alternative residential placement petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence to be determined by the department.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the alternative residential placement petition by the court. Any placement may be reviewed by the court within three court days upon the request of the juvenile or the juvenile's parent. [1990 c 276 § 11; 1989 c 269 § 2; 1979 c 155 § 30.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.170 Alternative residential placement—Fact-finding hearing—Three-month placement disposition plan—Hearing, when—Approval or denial of petition—Contempt proceedings, when. (1) The court shall hold a fact-finding hearing to consider a proper petition and may approve or deny alternative residential placement giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence, including a departmental recommendation for approval or dismissal of the petition, that:

(a) The petition is not capricious;

(b) The petitioner, if a parent or the child, has made a reasonable effort to resolve the conflict;

(c) The conflict which exists cannot be resolved by delivery of services to the family during continued placement of the child in the parental home;

(d) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(e) A suitable out-of-home placement resource is available.

The court may not grant a petition filed by the child or the department if it is established that the petition is based only upon a dislike of reasonable rules or reasonable discipline established by the parent.

(2) The order approving out-of-home placement shall direct the department to submit a disposition plan for a three-month placement of the child that is designed to reunite the family and resolve the family conflict. Such plan shall delineate any conditions or limitations on parental involvement. In making the order, the court shall further direct the department to make recommendations, as to which agency or person should have physical custody of the child, as to which parental powers should be awarded to such agency or person, and as to parental visitation rights. The

court may direct the department to consider the cultural heritage of the child in making its recommendations.

(3) The hearing to consider the recommendations of the department for a three-month disposition plan shall be set no later than fourteen days after the approval of the court of a petition to approve alternative residential placement. Each party shall be notified of the time and place of such disposition hearing.

(4) If the court approves or denies a petition for an alternative residential placement, a written statement of the reasons shall be filed. If the court denies a petition requesting that a child be placed in a residence other than the home of his or her parent, the court shall enter an order requiring the child to remain at or return to the home of his or her parent.

(5) If the court denies the petition, the court shall impress upon the party filing the petition of the legislative intent to restrict the proceedings to situations where a family conflict is so great that it cannot be resolved by the provision of in-home services.

(6) A child who fails to comply with a court order directing that the child remain at or return to the home of his or her parent shall be subject to contempt proceedings, as provided in this chapter, but only if the noncompliance occurs within ninety calendar days after the day of the order.

(7) The department may request, and the juvenile court may grant, dismissal of an alternative residential placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification. [1989 c 269 § 3; 1987 c 524 § 1; 1985 c 257 § 10; 1984 c 188 § 1; 1981 c 298 § 12; 1979 c 155 § 31.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.175 Alternative residential placement—Contribution to child's support, when—Enforcement of order. In any proceeding in which the court approves an alternative residential placement, the court shall inquire into the ability of parents to contribute to the child's support. If the court finds that the parents are able to contribute to the support of the child, the court shall order them to make such support payments as the court deems equitable. The court may enforce such an order by execution or in any way in which a court of equity may enforce its orders. However, payments shall not be required of a parent who has both opposed the placement and continuously sought reconciliation with, and the return of, the child. All orders entered in a proceeding approving alternative residential placement shall be in compliance with the provisions of RCW 26.23.050. [1987 c 435 § 13; 1981 c 298 § 15.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.177 Child support schedule. A determination of child support shall be based upon the child support schedule and standards adopted under *RCW 26.19.040. [1988 c 275 § 14.]

***Reviser's note:** RCW 26.19.040 was repealed by 1991 sp.s. c 28 § 8, effective September 1, 1991.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

13.32A.180 Three-month placement disposition plan—Hearing—Court order—No placement in secure residence. (1) At a dispositional hearing held to consider the three-month dispositional plan presented by the department the court shall consider all such recommendations included therein. The court, consistent with the stated goal of resolving the family conflict and reuniting the family, may modify such plan and shall make its dispositional order for a three-month out-of-home placement for the child. The court dispositional order shall specify the person or agency with whom the child shall be placed, those parental powers which will be temporarily awarded to such agency or person including but not limited to the right to authorize medical, dental, and optical treatment, and parental visitation rights. Any agency or residence at which the child is placed must, at a minimum, comply with minimum standards for licensed family foster homes.

(2) No placement made pursuant to this section may be in a secure residence as defined by the federal Juvenile Justice and Delinquency Prevention Act of 1974 and clarifying interpretations and regulations promulgated thereunder. [1979 c 155 § 32.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.190 Three-month placement dispositional order—Review of in subsequent hearings—Time limitation on out-of-home placement once hearings commence. (1) Upon making a dispositional order under RCW 13.32A.180, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel and/or a guardian ad litem to represent the child at the review hearing, advise parents of their right to be represented by legal counsel at the review hearing, and notify the parties of their rights to present evidence at the hearing. Where resources are available, the court shall encourage the parent and child to participate in mediation programs for reconciliation of their conflict.

(2) At the review hearing, the court shall approve or disapprove the continuation of the dispositional plan in accordance with the goal of resolving the conflict and reuniting the family which governed the initial approval. The court shall determine whether reasonable efforts have been made to reunify the family and make it possible for the child to return home. The court is authorized to discontinue the placement and order that the child return home if the court has reasonable grounds to believe that the parents have displayed concerted efforts to utilize services and resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home place-

ment is continued, the court may modify the dispositional plan.

(3) Out-of-home placement may not be continued past one hundred eighty days from the day the review hearing commenced. The court shall order that the child return to the home of the parent at the expiration of the placement. If continued out-of-home placement is disapproved, the court shall enter an order requiring that the child return to the home of the child's parent.

(4) The department may request, and the juvenile court may grant, dismissal of an alternative residential placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification. [1989 c 269 § 5; 1984 c 188 § 2; 1981 c 298 § 13; 1979 c 155 § 33.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.192 At-risk youth petition—Prehearing procedures. (1) When a proper at-risk youth petition is filed by a child's parent under RCW 13.32A.120 or 13.32A.150, the juvenile court shall:

(a) Schedule a fact-finding hearing and notify the parent and the child of such date;

(b) Notify the parent of the right to be represented by counsel at the parent's own expense;

(c) Appoint legal counsel for the child;

(d) Inform the child and his or her parent of the legal consequences of the court finding the child to be an at-risk youth; and

(e) Notify the parent and the child of their rights to present evidence at the fact-finding hearing.

(2) Unless out-of-home placement of the child is otherwise authorized or required by law, the child shall reside in the home of his or her parent or in an alternative residential placement approved by the parent. Upon request by the parent, the court may enter a court order requiring the child to reside in the home of his or her parent or an alternative residential placement approved by the parent.

(3) If upon sworn written or oral declaration of the petitioning parent, the court has reason to believe that a child has willfully and knowingly violated a court order issued pursuant to subsection (2) of this section, the court may issue an order directing law enforcement to take the child into custody and place the child in a juvenile detention facility or in a crisis residential center licensed by the department and established pursuant to chapter 74.13 RCW. If the child is placed in detention, a review shall be held as provided in RCW 13.32A.065.

(4) If both an alternative residential placement petition and an at-risk youth petition have been filed with regard to the same child, the proceedings shall be consolidated for purposes of fact-finding. Pending a fact-finding hearing regarding the petition, the child may be placed, if not already placed, in an alternative residential placement as provided in RCW 13.32A.160 unless the court has previously entered an order requiring the child to reside in the home of his or her parent. The child or the parent may request a review of the child's placement including a review of any court order requiring the child to reside in the parent's home. At the review the court, in its discretion, may order the child placed in the parent's home or in an alternative residential placement pending the hearing. [1990 c 276 § 12.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.194 At-risk youth petition—Court procedures. (1) The court shall hold a fact-finding hearing to consider a proper at-risk youth petition. The court may grant the petition and enter an order finding the child to be an at-risk youth if the allegations in the petition are established by a preponderance of the evidence. The court shall not enter such an order if the court has approved an alternative residential placement petition regarding the child or if the child is the subject of a proceeding under chapter 13.34 RCW. If the petition is granted, the court shall enter an order requiring the child to reside in the home of his or her parent or in an alternative residential placement approved by the parent.

(2) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided timely notification of all court hearings.

(3) A dispositional hearing shall be held no later than fourteen days after the court has granted an at-risk youth petition. Each party shall be notified of the time and date of the hearing.

(4) If the court grants or denies an at-risk youth petition, a statement of the written reasons shall be entered into the records. If the court denies an at-risk youth petition, the court shall verbally advise the parties that the child is required to remain within the care, custody, and control of his or her parent. [1990 c 276 § 13.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.196 At-risk youth petition—Dispositional hearing. (1) At the dispositional hearing regarding an adjudicated at-risk youth, the court shall consider the recommendations of the parties and the recommendations of any dispositional plan submitted by the department. The court may enter a dispositional order that will assist the parent in maintaining the care, custody, and control of the child and assist the family to resolve family conflicts or problems.

(2) The court may set conditions of supervision for the child that include:

(a) Regular school attendance;

(b) Counseling;

(c) Participation in a substance abuse treatment program;

(d) Reporting on a regular basis to the department or any other designated person or agency; and

(e) Any other condition the court deems an appropriate condition of supervision.

(3) No dispositional order or condition of supervision ordered by a court pursuant to this section shall include involuntary commitment of a child for substance abuse or mental health treatment.

(4) The court may order the parent to participate in counseling services or any other services for the child requiring parental participation. The parent shall cooperate with the court-ordered case plan and shall take necessary steps to help implement the case plan. The parent shall be financially responsible for costs related to the court-ordered plan; however, this requirement shall not affect the eligibility of the parent or child for public assistance or other benefits to which the parent or child may otherwise be entitled. The parent may request dismissal of an at-risk youth proceeding at any time and upon such a request, the court shall dismiss the matter and cease court supervision of the child unless a contempt action is pending in the case. The court may retain jurisdiction over the matter for the purpose of concluding any pending contempt proceedings, including the full satisfaction of any penalties imposed as a result of a contempt finding.

(5) The court may order the department to monitor compliance with the dispositional order, assist in coordinating the provision of court-ordered services, and submit reports at subsequent review hearings regarding the status of the case. [1991 c 364 § 14; 1990 c 276 § 14.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.198 At-risk youth—Review by court. (1) Upon making a disposition regarding an adjudicated at-risk youth, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel for the child, advise the parent of the right to be represented by legal counsel at the review hearing at the parent's own expense, and notify the parties of their rights to present evidence at the hearing.

(2) At the review hearing, the court shall approve or disapprove the continuation of court supervision in accordance with the goal of assisting the parent to maintain the care, custody, and control of the child. The court shall determine whether the parent and child are complying with the dispositional plan. If court supervision is continued, the court may modify the dispositional plan.

(3) Court supervision of the child may not be continued past one hundred eighty days from the day the review hearing commenced unless the court finds, and the parent agrees, that there are compelling reasons for an extension of supervision. Any extension granted pursuant to this subsection shall not exceed ninety days.

(4) The court may dismiss an at-risk youth proceeding at any time if the court finds good cause to believe that continuation of court supervision would serve no useful purpose or that the parent is not cooperating with the court-ordered case plan. The court shall dismiss an at-risk youth proceeding if the child is the subject of a proceeding under chapter 13.34 RCW. [1990 c 276 § 15.]

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

13.32A.200 Hearings under chapter—Time or place—General public excluded. All hearings pursuant to this chapter may be conducted at any time or place within the county of the residence of the parent and such cases shall not be heard in conjunction with the business of any other division of the superior court. The general public shall be excluded from hearings and only such persons who are found by the court to have a direct interest in the case or the work of the court shall be admitted to the proceedings. [1979 c 155 § 34.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.210 Foster home placement—Parental preferences. In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences such as family constellation, ethnicity, and religion shall be given consideration when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and should be integrated through the foster care team. [1990 c 284 § 24.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

13.32A.250 Failure to comply with order as contempt—Motion—Penalties. (1) In all alternative residential placement proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. The court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is a contempt of court as provided in chapter 7.21 RCW, subject to the limitations of *subsection (2) of this section.

(3) The court may impose a fine of up to one hundred dollars and imprisonment for up to seven days, or both for contempt of court under this section.

(4) A child imprisoned for contempt under this section shall be imprisoned only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter. [1990 c 276 § 16. Prior: 1989 c 373 § 16; 1989 c 269 § 4; 1981 c 298 § 14.]

***Reviser's note:** The reference to subsection (2) of this section apparently should be to subsection (3) of this section.

Intent—Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1989 c 373: See RCW 7.21.900.

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.260 Implementation and enforcement of juvenile justice laws—Reports. See RCW 13.04.460.

Chapter 13.34

JUVENILE COURT ACT IN CASES RELATING TO DEPENDENCY OF A CHILD AND THE TERMINATION OF A PARENT AND CHILD RELATIONSHIP

Sections

Family preservation services: Chapter 74.14C RCW.

Foster placement prevention: Chapter 74.14C RCW.

Implementation of chapters 13.32A and 13.34 RCW—Report to local governments: RCW 74.13.036.

Information about rights: RCW 26.44.100 through 26.44.120.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Procedures for families in conflict, interstate compact to apply, when: RCW 13.32A.110.

Therapeutic family home program for youth in custody under chapter 13.34 RCW: RCW 74.13.170.

13.34.010 Short title. This chapter shall be known as the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship". [1977 ex.s. c 291 § 29.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child. The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter. [1990 c 284 § 31; 1987 c 524 § 2; 1977 ex.s. c 291 § 30.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.030 Definitions—"Child," "juvenile," "dependent child." For purposes of this chapter:

(1) "Child" and "juvenile" means any individual under the age of eighteen years;

(2) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has evidenced either by statement or conduct, a settled intent to forego, for an extended period, all parental rights or all parental responsibilities despite an ability to do so;

(b) Who is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Who has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Who has a developmental disability, as defined in RCW 71A.10.020 and whose parent, guardian, or legal custodian together with the department determines that

services appropriate to the child's needs can not be provided in the home. However, (a), (b), and (c) of this subsection may still be applied if other reasons for removal of the child from the home exist. [1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Severability—1988 c 176: See RCW 71A.10.900.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.] For codification of 1983 c 311, see Codification Tables, Volume 0.

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.040 Petition to court to deal with dependent child. Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and praying that the superior court deal with such child as provided in this chapter: PROVIDED, That in counties having paid probation officers, such officers shall, as far as possible, first determine if such petition is reasonably justifiable. Such petition shall be verified and shall contain a statement of facts constituting such dependency, as defined in this chapter, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of such dependent child. There shall be no fee for filing such petitions. [1977 ex.s. c 291 § 32; 1913 c 160 § 5; RRS § 1987-5. Formerly RCW 13.04.060.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.050 Court order to take child into custody, when. The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if a petition is filed with the juvenile court alleging that the child is dependent and the court finds reasonable grounds to believe the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody. [1979 c 155 § 38; 1977 ex.s. c 291 § 33.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.055 Custody by law enforcement officer—Release from liability. (1) A law enforcement officer shall take into custody a child taken in violation of RCW 9A.40.060 or 9A.40.070. The law enforcement officer shall make every reasonable effort to avoid placing additional trauma on the child by obtaining such custody at times and in a manner least disruptive to the child. The law enforcement officer shall return the child to the person or agency having the right to physical custody unless the officer has reasonable grounds to believe the child should be taken into custody under RCW 13.34.050 or 26.44.050. If there is no person or agency having the right to physical custody available to take custody of the child, the officer may place the child in shelter care as provided in RCW 13.34.060.

(2) A law enforcement officer or public employee acting reasonably and in good faith shall not be held liable in any civil action for returning the child to a person having the apparent right to physical custody. [1984 c 95 § 4.]

Severability—1984 c 95: See note following RCW 9A.40.060.

13.34.060 Placing child in shelter care—Court procedures and rights of parties—Release. (1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to that section. Whenever a child is taken into such custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing within seventy-two hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays. If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, that such waiver is knowing and voluntary.

(2) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parents, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title as soon as possible and in no event longer than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody. The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

The written notice of custody and rights shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody. You should call the court at __(insert appropriate phone number here)__ for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: __(explain local procedure)__.

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: __(insert name and telephone number)__."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under subsection (2) of this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in subsections (2) and (3) of this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the juvenile court counselor or caseworker shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.

(5) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived in court.

(6) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for shelter care. The court shall make an express finding as to whether the notice required under subsections (2) and (3) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(7) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

(8) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(a) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(b)(i) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(ii) The release of such child would present a serious threat of substantial harm to such child; or

(iii) The parent, guardian, or custodian to whom the child could be released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The court shall enter a finding as to whether subsections (2) and (3) of this section have been complied with. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090.

(9) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(10) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be detained for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(11) Any parent, guardian, or legal custodian who for good cause is unable to attend the initial shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. The hearing shall be held within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means. [1990 c 246 § 1; 1987 c 524 § 4. Prior: 1984 c 188 § 3; 1984 c 95 § 5; 1983 c 246 § 1; 1982 c 129 § 5; 1979 c 155 § 39; 1977 ex.s. c 291 § 34.]

Severability—1990 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 246 § 11.]

Severability—1984 c 95: See note following RCW 9A.40.060.

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear. (1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances do exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or [her] right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(5) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him to the place of shelter designated by the court.

(6) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (4) or (5) of this section, and if the person fails to abide by the order, he may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(7) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy thereof by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy thereof to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(8) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department of social and health services social worker.

(9) In any proceeding brought under this chapter where the court knows or has reason to know that the child involved is a member of an Indian tribe, notice of the pendency of the proceeding shall also be sent by registered mail, return receipt requested, to the child's tribe. If the identity or location of the tribe cannot be determined, such notice shall be transmitted to the secretary of the interior of the United States. [1990 c 246 § 2; 1988 c 194 § 2; 1983 c 311 § 3; 1983 c 3 § 16; 1979 c 155 § 40; 1977 ex.s. c 291 § 35; 1913 c 160 § 6; RRS § 1987-6. Formerly RCW 13.04.070.]

Severability—1990 c 246: See note following RCW 13.34.060.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.080 Summons when petition filed—Publication of. In a dependency case where it appears by the petition or verified statement, that the person standing in the position of natural or legal guardian of the person of any child, is a nonresident of this state, or that the name or place of residence or whereabouts of such person is unknown, as well as in all cases where, after due diligence, the officer has been unable to make service of the summons or notice provided for in RCW 13.34.070, and a copy of the notice has been deposited in the post office, postage prepaid, directed to such person at his last known place of residence, the court shall direct the clerk to publish notice in a legal newspaper printed in the county, qualified to publish summons, once a week for three consecutive weeks, with the first publication of the notice to be at least twenty-five days prior to the date fixed for the hearing. If the parent, guardian, or legal custodian is believed to be a resident of another state or a county other than the county in which the petition has been filed, notice also shall be published in the county in which the parent, guardian, or legal custodian is believed to reside. Additionally, publication may proceed simultaneously with efforts to provide personal service or service by mail for good cause shown, when there is reason to believe that personal service or service by mail will not be successful. Such notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known, or if unknown, the phrase "To whom it may concern" shall be used and apply to, and be binding upon, any such persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the filing of the petition, the date of hearing, and the object of the proceeding in general terms shall be set forth, and the whole shall be subscribed by the clerk. There shall be filed with the clerk an affidavit showing due publication of the notice, and the cost of publication shall be paid by the county at not to exceed the rate paid by the county for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section. [1990 c 246 § 3; 1988 c 201 § 1; 1979 c 155 § 41; 1977 ex.s. c 291 § 36; 1961 c 302 § 4; 1913 c 160 § 7; RRS § 1987-7. Formerly RCW 13.04.080.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.090 Inherent rights under chapter proceedings. (1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent pursuant to RCW 13.34.030(2), the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency as defined in chapter 10.101 RCW.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, within twenty days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. [1990 c 246 § 4; 1979 c 155 § 42; 1977 ex.s. c 291 § 37.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Notice of rights: RCW 26.44.105.

13.34.100 Appointment of attorney and/or guardian ad litem—Limitation—Membership in Indian tribe or band. The court shall appoint an attorney and/or a guardian ad litem for a child who is a party to the proceedings in all contested proceedings under this chapter unless a court, for good cause, finds the appointment unnecessary. An attorney and/or guardian ad litem may be appointed at the discretion of the court in uncontested proceedings: PROVIDED, That the requirement of a guardian ad litem shall be deemed satisfied if the child is represented by counsel in the proceedings. A party to the proceeding or the party's employee or representative shall not be so appointed. Such attorney and/or guardian ad litem shall receive all notice contemplated for a parent in all proceedings under this chapter. A report by the guardian ad litem to the court shall contain, where relevant, information on the legal status of a child's membership in any Indian tribe or band. [1988 c 232 § 1; 1979 c 155 § 43; 1977 ex.s. c 291 § 38.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.110 Hearings, fact-finding and disposition—Time and place, notice—Not generally public—Notes and records. The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor, and after it has announced its findings of fact shall hold a hearing to consider disposition of the case immediately following the fact-finding hearing or at a continued hearing

within fourteen days or longer for good cause shown. The parties need not appear at the fact-finding or dispositional hearing if all are in agreement; but the court shall receive and review a social study before entering an order based on agreement. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by mail of the time and place of any continued hearing.

All hearings may be conducted at any time or place within the limits of the county, and such cases may not be heard in conjunction with other business of any other division of the superior court. The general public shall be excluded, and only such persons may be admitted who are found by the judge to have a direct interest in the case or in the work of the court. If a child resides in foster care or in the home of a relative pursuant to a disposition order entered under RCW 13.34.130, the court may allow the child's foster parent or relative care provider to attend dependency review proceedings pertaining to the child for the sole purpose of providing information about the child to the court.

Stenographic notes or any device which accurately records the proceedings may be required as provided in other civil cases pursuant to RCW 2.32.200. [1991 c 340 § 3; 1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.120 Social study and predisposition study to be utilized at disposition hearing—Contents—Notice to parents. (1) To aid the court in its decision on disposition, a social study, consisting of a written evaluation of matters relevant to the disposition of the case, shall be made by the person or agency filing the petition. The study shall include all social records and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file and social study at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the community service office. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

(2) In addition to the requirements set forth in subsection (1) of this section, a predisposition study to the court in cases of dependency alleged pursuant to RCW 13.34.030(2) (b) or (c) shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific programs, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such programs are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs which have been considered and rejected; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal. This section should include an exploration of the nature of the parent-child attachment and the meaning of separation and loss to both the parents and the child;

(e) A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary. [1987 c 524 § 5; 1979 c 155 § 45; 1977 ex.s. c 291 § 40.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.130 Order of disposition for certain dependent children, alternatives—Later review hearing—Petition seeking termination of parent-child relationship. If, after a fact-finding hearing pursuant to RCW 13.34.110, as now or hereafter amended, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030(2); after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster

family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that:

(i) There is no parent or guardian available to care for such child;

(ii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iii) A manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or

(iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds it is recommended by the supervising agency, that it is in the best interests of the child and that it is not reasonable to provide further services to reunify the family because the existence of aggravated circumstances make it unlikely that services will effectuate the return of the child to the child's parents in the near future. In determining whether aggravated circumstances exist, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(f) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim.

(3) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanent plan of care that may include one of the following: Return of the child to the home of the child's parent, adoption, guardianship, or long-term placement with a relative or in foster care with a written agreement.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

(4) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts

and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

(5) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed. [1992 c 145 § 14; 1991 c 127 § 4. Prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Severability—1990 c 246: See note following RCW 13.34.060.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.145 Permanency planning hearing—Time limit—Extensions. (1) In all cases where a child has been placed in substitute care for at least fifteen months, a permanency planning hearing shall be held before the court no later than eighteen months following commencement of the placement episode.

(2) At the permanency planning hearing, the court shall enter findings as required by *RCW 13.34.130(4). In addition the court shall: (a) Approve a permanent plan of care which can include one of the following: Adoption, guardianship, or placement of the child in the home of the child's parent; (b) require filing of a petition for termination of parental rights; or (c) dismiss the dependency, unless the court finds, based on clear, cogent, and convincing evidence, that it is in the best interest of the child to continue the dependency beyond eighteen months, based on a permanent plan of care. Extensions may only be granted in increments of twelve months or less. [1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

***Reviser's note:** RCW 13.34.130 was amended by 1990 c 284 § 32, and the previous subsection (4) was renumbered as subsection (5).

13.34.150 Modification of orders. Any order made by the court in the case of a dependent child may be changed, modified, or set aside, only upon a showing of a change in circumstance. [1990 c 246 § 6; 1977 ex.s. c 291 § 43; 1913 c 160 § 15; RRS § 1987-15. Formerly RCW 13.04.150.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.160 Order of support for dependent child. In any case in which the court shall find the child dependent, it may in the same or subsequent proceeding upon the parent or parents, guardian, or other person having custody of said child, being duly summoned or voluntarily appearing, proceed to inquire into the ability of such persons or person able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW 26.23.050. [1987 c 435 § 14; 1981 c 195 § 8; 1977 ex.s. c 291 § 44; 1969 ex.s. c 138 § 1; 1961 c 302 § 7; 1913 c 160 § 8; RRS § 1987-8. Formerly RCW 13.04.100.]

Effective date—1987 c 435: See RCW 26.23.900.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.162 Child support schedule. A determination of child support shall be based upon the child support schedule and standards adopted under *RCW 26.19.040. [1988 c 275 § 15.]

***Reviser's note:** RCW 26.19.040 was repealed by 1991 sp.s. c 28 § 8, effective September 1, 1991.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

13.34.165 Contempt—Grounds—Motion—Penalty. (1) Failure by a party to comply with an order entered under this chapter is contempt of court as provided in chapter 7.21 RCW.

(2) The maximum term of imprisonment that may be imposed as a punitive sanction for contempt of court under this section is confinement for up to seven days.

(3) A child imprisoned for contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter. [1989 c 373 § 17; 1985 c 257 § 1.]

Severability—1989 c 373: See RCW 7.21.900.

Severability—1985 c 257: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 257 § 12.]

13.34.170 Judgment for financial support—Enforcement. In any case in which an order or decree of the juvenile court requiring a parent or parents, guardian, or other person having custody of a child to pay for shelter care and/or support of such child is not complied with, the court may, upon such person or persons being duly summoned or voluntarily appearing, proceed to inquire into the amount due upon said order or decree and enter judgment for such amount against the defaulting party or parties, and such judgment shall be docketed as are other judgments for the payment of money.

In such judgments, the county in which the same are entered shall be denominated the judgment creditor, or the state may be the judgment creditor where the child is in the custody of a state agency and said judgments may be enforced by the prosecuting attorney of such county, or the attorney general where the state is the judgment creditor and any moneys recovered thereon shall be paid into the registry of the juvenile court and shall be disbursed to such person, persons, agency, or governmental department as the court shall find to be entitled thereto.

Such judgments shall remain as valid and enforceable judgments for a period of ten years subsequent to the entry thereof. [1981 c 195 § 9; 1977 ex.s. c 291 § 45; 1961 c 302 § 8; 1955 c 188 § 1. Formerly RCW 13.04.105.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Financial responsibility for costs of detention: RCW 13.16.085.

13.34.180 Order terminating parent and child relationship—Petition for—Filing—Allegations. A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(7), and shall allege:

(1) That the child has been found to be a dependent child under RCW 13.34.030(2); and

(2) That the court has entered a dispositional order pursuant to RCW 13.34.130; and

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(2); and

(4) That the services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided; and

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(6) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home;

(7) In lieu of the allegations in subsections (1) through (6) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: __(explain local procedure)__.

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call __(insert agency)__ for more information about your child. The agency's name and telephone number are __(insert name and telephone number)__."

[1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.190 Order terminating parent and child relationship—Hearings—Granting of, when. After hearings pursuant to RCW 13.34.110, the court may enter an order terminating all parental rights to a child if the court finds that:

(1) The allegations contained in the petition as provided in RCW 13.34.180 (1) through (6) are established by clear, cogent, and convincing evidence; or

(2) RCW 13.34.180 (3) and (4) may be waived because the allegations under RCW 13.34.180 (1), (2), (5), and (6) are established beyond a reasonable doubt; or

(3) The allegation under RCW 13.34.180(7) is established beyond a reasonable doubt. In determining whether RCW 13.34.180 (5) and (6) are established beyond a reasonable doubt, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 or 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(f) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim; and

(4) Such an order is in the best interests of the child. [1992 c 145 § 15; 1990 c 284 § 33; 1979 c 155 § 48; 1977 ex.s. c 291 § 47.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.200 Order terminating parent and child relationship—Rights of parties when granted. (1) Upon the termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child: PROVIDED, That any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that a native American child derives from the child's descent from a member of a federally recognized Indian tribe. [1977 ex.s. c 291 § 48.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights. If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department of social and health services or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption, or in the absence thereof in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a general guardian of the child has not been appointed by the court, the child shall be returned to the court for entry of further orders for his or her care, custody, and control, and, except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the court shall review the case every six months thereafter until a decree of adoption is entered. [1991 c 127 § 6; 1988 c 203 § 2; 1979 c 155 § 49; 1977 ex.s. c 291 § 49.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.220 Order terminating parent and child relationship—Prevailing party to present findings, etc., to court, when. Written findings of fact, conclusions of law, and orders of termination of parent/child relationships made under this chapter shall be presented to the court by the prevailing party within thirty days of the court's decision unless extended by the court for good cause shown. [1979 c 155 § 50.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.230 Guardianship for dependent child—Petition for—Notice to, intervention by, department. Any party to a dependency proceeding, including the supervising agency, may file a petition in juvenile court requesting that guardianship be created as to a dependent child. The department of social and health services shall receive notice of any guardianship proceedings and have the right to

intervene in the proceedings. [1981 c 195 § 1; 1979 c 155 § 51.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.231 Guardianship for dependent child—Hearing—Rights of parties—Rules of evidence—Guardianship established, when. At the hearing on a guardianship petition, all parties have the right to present evidence and cross examine witnesses. The rules of evidence apply to the conduct of the hearing. A guardianship may be established if the court finds by a preponderance of the evidence that:

(1) The child has been found to be a dependent child under RCW 13.34.030(2);

(2) A dispositional order has been entered pursuant to RCW 13.34.130;

(3) The child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(2);

(4) The services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;

(5) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(6) A guardianship rather than termination of the parent-child relationship or continuation of the child's current dependent status would be in the best interest of the family. [1981 c 195 § 2.]

13.34.232 Guardianship for dependent child—Order, contents. If the court has made a finding under RCW 13.34.231, it shall enter an order establishing a guardianship for the child. The order shall:

(1) Appoint a person or agency to serve as guardian;

(2) Specify the guardian's rights and responsibilities concerning the care, custody, and control of the child. A guardian shall not have the authority to consent to the child's adoption;

(3) Specify an appropriate frequency of visitation between the parent and the child; and

(4) Specify the need for any continued involvement of the supervising agency and the nature of that involvement, if any. [1981 c 195 § 3.]

13.34.233 Guardianship for dependent child—Modification of order. Any party may seek a modification of the guardianship order under RCW 13.34.150. [1981 c 195 § 4.]

13.34.234 Guardianship for dependent child—Guardian may receive foster care payments. Establishment of a guardianship under RCW 13.34.231 and 13.34.232 does not preclude a guardian from receiving foster care payments. [1981 c 195 § 5.]

13.34.235 Guardianship for dependent child—Review hearing requirements not applicable. A guardianship established under RCW 13.34.231 and 13.34.232 is not subject to the review hearing requirements of RCW 13.34.130. [1981 c 195 § 6.]

13.34.236 Guardianship for dependent child—Qualifications for guardian. Any person over the age of twenty-one years who is not otherwise disqualified by this section, any nonprofit corporation, or any Indian tribe may be appointed the guardian of a child under RCW 13.34.232. No person is qualified to serve as a guardian who: (1) Is of unsound mind; (2) has been convicted of a felony or misdemeanor involving moral turpitude; or (3) is a person whom the court finds unsuitable. [1981 c 195 § 7.]

13.34.240 Acts, records and proceedings of Indian tribe or band given full faith and credit. The courts of this state shall give full faith and credit as provided for in the United States Constitution to the public acts, records, and judicial proceedings of any Indian tribe or band in any proceeding brought pursuant to this chapter to the same extent that full faith and credit is given to the public acts, records, and judicial proceedings of any other state. [1979 c 155 § 52.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.245 Voluntary consent to foster care placement for Indian child—Validation—Withdrawal of consent—Termination. (1) Where any parent or Indian custodian voluntarily consents to foster care placement of an Indian child and a petition for dependency has not been filed regarding the child, such consent shall not be valid unless executed in writing before the court and filed with the court. The consent shall be accompanied by the written certification of the court that the terms and consequences of the consent were fully explained in detail to the parent or Indian custodian during the court proceeding and were fully understood by the parent or Indian custodian. The court shall also certify in writing either that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) To obtain court validation of a voluntary consent to foster care placement, any person may file a petition for validation alleging that there is located or residing within the county an Indian child whose parent or Indian custodian wishes to voluntarily consent to foster care placement of the child and requesting that the court validate the consent as provided in this section. The petition shall contain the name, date of birth, and residence of the child, the names and residences of the consenting parent or Indian custodian, and the name and location of the Indian tribe in which the child is a member or eligible for membership. The petition shall state whether the placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be followed. Reasonable attempts shall be made by the petitioner to ascertain and set forth in the petition the identity, location, and custodial status of any parent or Indian custodian who has not consented to foster care placement and why that parent or Indian custodian cannot assume custody of the child.

(3) Upon filing of the petition for validation, the clerk of the court shall schedule the petition for a hearing on the court validation of the voluntary consent no later than forty-eight hours after the petition has been filed, excluding Saturdays, Sundays, and holidays. Notification of time, date, location, and purpose of the validation hearing shall be provided as soon as possible to the consenting parent or Indian custodian, the department or other child-placing agency which is to assume custody of the child pursuant to the consent to foster care placement, and the Indian tribe in which the child is enrolled or eligible for enrollment as a member. If the identity and location of any nonconsenting parent or Indian custodian is known, reasonable attempts shall be made to notify the parent or Indian custodian of the consent to placement and the validation hearing. Notification under this subsection may be given by the most expedient means, including, but not limited to, mail, personal service, telephone, and telegraph.

(4) Any parent or Indian custodian may withdraw consent to a voluntary foster care placement, made under this section, at any time. Unless the Indian child has been taken in custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the Indian child shall be returned to the parent or Indian custodian upon withdrawal of consent to foster care placement of the child.

(5) Upon termination of the voluntary foster care placement and return of the child to the parent or Indian custodian, the department or other child placing agency which had assumed custody of the child pursuant to the consent to foster care placement shall file with the court written notification of the child's return and shall also send such notification to the Indian tribe in which the child is enrolled or eligible for enrollment as a member and to any other party to the validation proceeding including any noncustodial parent. [1987 c 170 § 2.]

Severability—1987 c 170: See note following RCW 13.04.030.

13.34.250 Preference characteristics when placing Indian child in foster care home. Whenever appropriate, an Indian child shall be placed in a foster care home with the following characteristics which shall be given preference in the following order:

(1) Relatives;

(2) An Indian family of the same tribe as the child;

(3) An Indian family of a Washington Indian tribe of a similar culture to that tribe;

(4) Any other family which can provide a suitable home for an Indian child, such suitability to be determined through consultation with a local Indian child welfare advisory committee. [1979 c 155 § 53.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.260 Foster home placement—Parental preferences. In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences such as family constellation, ethnicity, and religion shall be given consideration when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and should be integrated through the foster care team. [1990 c 284 § 25.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

13.34.300 Failure to cause juvenile to attend school as evidence under neglect petition. The legislature finds that it is the responsibility of the custodial parent, parents or guardian to ensure that children within the custody of such individuals attend school as provided for by law. To this end, while a parent's failure to cause a juvenile to attend school should not alone provide a basis for a neglect petition against the parent or guardian, when a neglect petition is filed on the basis of other evidence, a parent or guardian's failure to take reasonable steps to ensure that the juvenile attends school may be used as evidence with respect to the question of the appropriate disposition of a neglect petition. [1979 ex.s. c 201 § 3.]

13.34.310 Implementation and enforcement of juvenile justice laws—Reports. See RCW 13.04.460.

Chapter 13.40
JUVENILE JUSTICE ACT OF 1977

Sections

1977 ex.s. c 291: "(1) There is appropriated for the period July 1, 1978, to June 30, 1979, from the general fund nine hundred eighty-three thousand six hundred dollars to be allocated to counties for the cost of operating diversion units as required by this chapter.

(2) The secretary shall administer the funds and shall promulgate, pursuant to chapter 34.04 RCW, rules establishing a planning process and standards which meet the intent of this chapter. The secretary shall also monitor and evaluate, against established standards, all programs and services funded by this appropriation.

(3) The total sum shall be allocated by the secretary to the counties. Diversion units funded by this section shall be administered and operated separately from the court: PROVIDED, That counties of classes other than AA and A may request for an exemption from this requirement. The secretary may grant such exemption if it is clearly demonstrated that resources do not exist nor can be established in such county to operate diversion units separately from the court.

(4) In meeting the requirements of this chapter, there shall be a maintenance of effort whereby counties shall exhaust existing resources prior to the utilization of funds appropriated by this section.

(5) It is the intent of the legislature that these funds shall be the maximum amount necessary to meet the requirement of this chapter for the stated period. Courts shall be required to provide diversion programs and services to the extent made possible by available sources. In addressing diverted youths, a resource priority continuum shall be developed whereby the highest priority in resource allocation shall be given to diverted youths who have inflicted bodily harm while the lowest priority shall be given to diverting youths who have committed victimless crimes or minor property offenses." [1977 ex.s. c 291 § 79.]

Health and dental examination and care for juveniles in detention facility—Consent: RCW 13.04.047.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Treatment of juvenile offenders: RCW 74.14A.030, 74.14A.040.

13.40.010 Short title—Intent—Purpose. (1) This chapter shall be known and cited as the Juvenile Justice Act of 1977.

(2) It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that both communities and the juvenile courts carry out their functions consistent with this intent. To effectuate these policies, the legislature declares the following to be equally important purposes of this chapter:

(a) Protect the citizenry from criminal behavior;

(b) Provide for determining whether accused juveniles have committed offenses as defined by this chapter;

(c) Make the juvenile offender accountable for his or her criminal behavior;

(d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;

(e) Provide due process for juveniles alleged to have committed an offense;

(f) Provide necessary treatment, supervision, and custody for juvenile offenders;

(g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;

(h) Provide for restitution to victims of crime;

(i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels; and

(j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services. [1992 c 205 § 101; 1977 ex.s. c 291 § 55.]

Part headings not law—1992 c 205: "Part headings as used in this act do not constitute any part of the law." [1992 c 205 § 405.]

Severability—1992 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 205 § 406.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.020 Definitions. For the purposes of this chapter:

(1) "Serious offender" means a person fifteen years of age or older who has committed an offense which if committed by an adult would be:

(a) A class A felony, or an attempt to commit a class A felony;

(b) Manslaughter in the first degree; or

(c) Assault in the second degree, extortion in the first degree, child molestation in the second degree, kidnapping in the second degree, robbery in the second degree, residential burglary, or burglary in the second degree, where such offenses include the infliction of bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator is armed with a deadly weapon or firearm as defined in RCW 9A.04.110;

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense;

(3) "Community supervision" means an order of disposition by the court of an adjudicated youth. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses and include one or more of the following:

(a) A fine, not to exceed one hundred dollars;

(b) Community service not to exceed one hundred fifty hours of service;

(c) Attendance of information classes;

(d) Counseling; or

(e) Such other services to the extent funds are available for such services, conditions, or limitations as the court may require which may not include confinement;

(4) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a facility operated by or pursuant to a contract with any county. Confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(5) "Court", when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(6) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history;

(7) "Department" means the department of social and health services;

(8) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender or any other person or entity with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.04.040, as now or hereafter amended, or any person or entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter;

(9) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(10) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court;

(11) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(12) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(13) "Middle offender" means a person who has committed an offense and who is neither a minor or first offender nor a serious offender;

(14) "Minor or first offender" means a person sixteen years of age or younger whose current offense(s) and criminal history fall entirely within one of the following categories:

(a) Four misdemeanors;

(b) Two misdemeanors and one gross misdemeanor;

(c) One misdemeanor and two gross misdemeanors;

(d) Three gross misdemeanors;

(e) One class C felony except manslaughter in the second degree and one misdemeanor or gross misdemeanor;

(f) One class B felony except: Any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; assault in the second degree; extortion in the first degree; indecent liberties; kidnapping in the second degree; robbery in the second degree; burglary in the second degree; residential burglary; vehicular homicide; or arson in the second degree.

For purposes of this definition, current violations shall be counted as misdemeanors;

(15) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(16) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(17) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense if the offense is a sex offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(18) "Secretary" means the secretary of the department of social and health services;

(19) "Services" mean services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(20) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(21) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(22) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(23) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration. [1990 1st ex.s. c 12 § 1; 1990 c 3 § 301; 1989 c 407 § 1; 1988 c 145 § 17; 1983 c 191 § 7; 1981 c 299 § 2; 1979 c 155 § 54; 1977 ex.s. c 291 § 56.]

Effective date—1990 1st ex.s. c 12: "This act shall take effect July 1, 1990." [1990 1st ex.s. c 12 § 5.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.025 Juvenile disposition standards commission—Duties—Members—Chairman—Terms—Vacancies—Meetings—Compensation and expenses. (1) There is established a juvenile disposition standards commission to propose disposition standards to the legislature in accordance with RCW 13.40.030 and perform the other responsibilities set forth in this chapter.

(2) The commission shall be composed of the secretary or the secretary's designee and the following nine members appointed by the governor, subject to confirmation by the senate: (a) A superior court judge; (b) a prosecuting attorney or deputy prosecuting attorney; (c) a law enforcement officer; (d) an administrator of juvenile court services; (e) a public defender actively practicing in juvenile court; (f) a county legislative official or county executive; and (g) three other persons who have demonstrated significant interest in the adjudication and disposition of juvenile offenders. In making the appointments, the governor shall seek the recommendations of the association of superior court judges in respect to the member who is a superior court judge; of Washington prosecutors in respect to the prosecuting attorney or deputy prosecuting attorney member; of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer; of juvenile court administrators in respect to the member who is a juvenile court administrator; and of the state bar association in respect to the public defender member; and of the Washington association of counties in respect to the member who is either a county legislative official or county executive.

(3) The secretary or the secretary's designee shall serve as chairman of the commission.

(4) The secretary shall serve on the commission during the secretary's tenure as secretary of the department. The term of the remaining members of the commission shall be three years. The initial terms shall be determined by lot conducted at the commission's first meeting as follows: (a) Four members shall serve a two-year term; and (b) four members shall serve a three-year term. In the event of a vacancy, the appointing authority shall designate a new member to complete the remainder of the unexpired term.

(5) Commission members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members shall be compensated in accordance with RCW 43.03.240.

(6) The commission shall meet at least once every three months. [1986 c 288 § 8; 1984 c 287 § 11; 1981 c 299 § 3.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

13.40.027 Juvenile disposition standards commission—Responsibilities generally—Department to assist. (1) It is the responsibility of the commission to: (a)(i) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally and (ii) specifically review the guidelines relating to the confinement of minor and first offenders as well as the use of diversion; (b) solicit the comments and suggestions of the juvenile justice community concerning disposition standards; and (c) make recommendations to the legislature regarding revisions or modifications of the disposition standards in accordance with RCW 13.40.030. The evaluations shall be submitted to the legislature by December 1, 1992, and on December 1 of each even-numbered year thereafter.

(2) It is the responsibility of the department to: (a) Provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders; (b) at the request of the commission, provide technical and administrative assistance to the commission in the performance of its responsibilities; and (c) provide the commission and legislature with recommendations for modification of the disposition standards. [1992 c 205 § 103; 1989 c 407 § 2; 1986 c 288 § 9; 1981 c 299 § 4.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Severability—1986 c 288: See note following RCW 13.32A.050.

13.40.030 Disposition standards for offenses—Establishment, procedure—Scope—Legislative review. (1)(a) The juvenile disposition standards commission shall recommend to the legislature no later than November 1st of each year disposition standards for all offenses. The standards shall establish, in accordance with the purposes of this chapter, ranges which may include terms of confinement and/or community supervision established on the basis of a youth's age, the instant offense, and the history and seriousness of previous offenses, but in no case may the period of confinement and supervision exceed that to which an adult

may be subjected for the same offense(s). Standards recommended for offenders listed in RCW 13.40.020(1) shall include a range of confinement which may not be less than thirty days. No standard range may include a period of confinement which includes both more than thirty, and thirty or less, days. Disposition standards recommended by the commission shall provide that in all cases where a youth is sentenced to a term of confinement in excess of thirty days the department may impose an additional period of parole not to exceed eighteen months. Standards of confinement which may be proposed may relate only to the length of the proposed terms and not to the nature of the security to be imposed. In developing recommended disposition standards, the commission shall consider the capacity of the state juvenile facilities and the projected impact of the proposed standards on that capacity.

(b) The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each year. At the same time the secretary shall submit a report on security at juvenile facilities during the preceding year. The report shall include the number of escapes from each juvenile facility, the most serious offense for which each escapee had been confined, the number and nature of offenses found to have been committed by juveniles while on escape status, the number of authorized leaves granted, the number of failures to comply with leave requirements, the number and nature of offenses committed while on leave, and the number and nature of offenses committed by juveniles while in the community on minimum security status; to the extent this information is available to the secretary. The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) In developing recommendations for the permissible ranges of confinement under this section the commission shall be subject to the following limitations:

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

(b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range. [1989 c 407 § 3; 1985 c 73 § 1; 1983 c 191 § 6; 1981 c 299 § 5; 1979 c 155 § 55; 1977 ex.s. c 291 § 57.]

Legislative ratification—1989 c 271: "The legislature ratifies the juvenile disposition standards commission guidelines submitted to the 1989 legislature and endorses the action to increase penalties for juvenile drug offenders." [1989 c 271 § 602.]

Effective date—1985 c 73: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 73 § 3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.0351 Equal application of guidelines and standards. The sentencing guidelines and prosecuting standards apply equally to juvenile offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the offender. [1989 c 407 § 5.]

13.40.0354 Computation of current offense points. The total current offense points for use in the standards range matrix of schedules D-1, D-2, and D-3 are computed as follows:

(1) The disposition offense category is determined by the offense of conviction. Offenses are divided into ten levels of seriousness, ranging from low (seriousness level E) to high (seriousness level A+), see schedule A, RCW 13.40.0357.

(2) The prior offense increase factor is summarized in schedule B, RCW 13.40.0357. The increase factor is determined for each prior offense by using the time span and the offense category in the prior offense increase factor grid. Time span is computed from the date of the prior offense to the date of the current offense. The total increase factor is determined by totalling the increase factors for each prior offense and adding a constant factor of 1.0.

(3) The current offense points are summarized in schedule C, RCW 13.40.0357. The current offense points are determined for each current offense by locating the juvenile's age on the horizontal axis and using the offense category on the vertical axis. The juvenile's age is determined as of the time of the current offense and is rounded down to the nearest whole number.

(4) The total current offense points are determined for each current offense by multiplying the total increase factor by the current offense points. The total current offense points are rounded down to the nearest whole number. [1989 c 407 § 6.]

13.40.0357 Dispositions standards for offenses.

SCHEDULE A
DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
	Arson and Malicious Mischief	
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (<$50 is E class) (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
A	Possession of Incendiary Device (9.40.120)	B+

	Assault and Other Crimes Involving Physical Harm	
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+
	Burglary and Trespass	
B+	Burglary 1 (9A.52.020)	C+
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
D	Vehicle Prowling (9A.52.100)	E
	Drugs	
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030)	D+
E	Possession of Legend Drug (69.41.030)	E
B+	Violation of Uniform Controlled Substances Act - Narcotic Sale (69.50.401(a)(1)(i))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(a)(1)(ii))	C
E	Possession of Marihuana <40 grams (69.50.401(e))	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	[1]Glue Sniffing (9.47A.050)	E
B	Violation of Uniform Controlled Substances Act - Narcotic Counterfeit Substances (69.50.401(b)(1)(i))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.401(b)(1) (ii), (iii), (iv))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(d))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(c))	C
	Firearms and Weapons	
C+	[2]Committing Crime when Armed (9.41.025)	D+
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
E	Use of Firearms by Minor (<14) (9.41.240)	E
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
	Homicide	
A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+
B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
	Kidnapping	
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
D	[3]Custodial Interference (9A.40.050)	E
	Obstructing Governmental Operation	
E	Obstructing a Public Servant (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D
E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
E	Criminal Contempt [4](9.23.010)	E
	Public Disturbance	
C+	Riot with Weapon (9A.84.010)	D+
D+	Riot Without Weapon (9A.84.010)	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
	Sex Crimes	
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	[5]Public Indecency (Victim <14) (9A.88.010)	E
E	[5]Public Indecency (Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
B+	Child Molestation 1 (9A.44.083)	C+
C+	Child Molestation 2 (9A.44.086)	C
	Theft, Robbery, Extortion, and Forgery	
B	Theft 1 (9A.56.030)	C
C	Theft 2 (9A.56.040)	D
D	Theft 3 (9A.56.050)	E
B	Theft of Livestock (9A.56.080)	C
C	[6]Forgery (9A.56.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+

B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
C	Taking Motor Vehicle Without Owner's Permission (9A.56.070)	D
	Motor Vehicle Related Crimes	
E	Driving Without a License (46.20.021)	E
C	Hit and Run - Injury (46.52.020(4))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.515)	E
B+	Negligent Homicide by Motor Vehicle (46.61.520)	C+
D	Vehicle Prowling (9A.52.100)	E
C	Taking Motor Vehicle Without Owner's Permission (9A.56.070)	D
	Other	
B	Bomb Threat (9.61.160)	C
C	Escape 1[1] (9A.76.110)	C
C	Escape 2[1] (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
C	Failure to Appear in Court (10.19.130)	D
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200)[2]	V

[1] Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

[2] If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

SCHEDULE B
PRIOR OFFENSE INCREASE FACTOR

For use with all CURRENT OFFENSES occurring on or after July 1, 1989.

OFFENSE CATEGORY	TIME SPAN 0-12 Months	13-24 Months	25 Months or More
A+	.9	.9	.9
A	.9	.8	.6
A-	.9	.8	.5
B+	.9	.7	.4
B	.9	.6	.3
C+	.6	.3	.2
C	.5	.2	.2
D+	.3	.2	.1
D	.2	.1	.1
E	.1	.1	.1

Prior history - Any offense in which a diversion agreement or counsel and release form was signed, or any offense which has been adjudicated by court to be correct prior to the commission of the current offense(s).

SCHEDULE C
CURRENT OFFENSE POINTS

For use with all CURRENT OFFENSES occurring on or after July 1, 1989.

OFFENSE CATEGORY	AGE 12 & Under	13	14	15	16	17
A+	STANDARD RANGE 180-224 WEEKS					
A	250	300	350	375	375	375
A-	150	150	150	200	200	200
B+	110	110	120	130	140	150
B	45	45	50	50	57	57
C+	44	44	49	49	55	55
C	40	40	45	45	50	50
D+	16	18	20	22	24	26
D	14	16	18	20	22	24
E	4	4	4	6	8	10

JUVENILE SENTENCING STANDARDS
SCHEDULE D-1

This schedule may only be used for minor/first offenders. After the determination is made that a youth is a minor/first offender, the court has the discretion to select sentencing option A, B, or C.

MINOR/FIRST OFFENDER

OPTION A
STANDARD RANGE

Points	Community Supervision	Community Service Hours	Fine
1-9	0-3 months	and/or 0-8	and/or 0-$10
10-19	0-3 months	and/or 0-8	and/or 0-$10
20-29	0-3 months	and/or 0-16	and/or 0-$10
30-39	0-3 months	and/or 8-24	and/or 0-$25
40-49	3-6 months	and/or 16-32	and/or 0-$25
50-59	3-6 months	and/or 24-40	and/or 0-$25
60-69	6-9 months	and/or 32-48	and/or 0-$50
70-79	6-9 months	and/or 40-56	and/or 0-$50
80-89	9-12 months	and/or 48-64	and/or 0-$100
90-109	9-12 months	and/or 56-72	and/or 0-$100

OR

OPTION B
STATUTORY OPTION

0-12 Months Community Supervision
0-150 Hours Community Service
0-100 Fine

A term of community supervision with a maximum of 150 hours, $100.00 fine, and 12 months supervision.

OR

OPTION C
MANIFEST INJUSTICE

When a term of community supervision would effectuate a manifest injustice, another disposition may be imposed. When a judge imposes a sentence of confinement exceeding 30 days, the court shall sentence the juvenile to a maximum term and the provisions of *(m)RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range.

JUVENILE SENTENCING STANDARDS
SCHEDULE D-2

This schedule may only be used for middle offenders. After the determination is made that a youth is a middle offender, the court has the discretion to select sentencing option A, B, or C.

MIDDLE OFFENDER

OPTION A
STANDARD RANGE

Points	Community Supervision	Community Service Hours	Fine	Confinement Days Weeks
1-9	0-3 months	and/or 0-8	and/or 0-$10	and/or 0
10-19	0-3 months	and/or 0-8	and/or 0-$10	and/or 0
20-29	0-3 months	and/or 0-16	and/or 0-$10	and/or 0
30-39	0-3 months	and/or 8-24	and/or 0-$25	and/or 2-4
40-49	3-6 months	and/or 16-32	and/or 0-$25	and/or 2-4
50-59	3-6 months	and/or 24-40	and/or 0-$25	and/or 5-10
60-69	6-9 months	and/or 32-48	and/or 0-$50	and/or 5-10
70-79	6-9 months	and/or 40-56	and/or 0-$50	and/or 10-20
80-89	9-12 months	and/or 48-64	and/or 0-$100	and/or 10-20
90-109	9-12 months	and/or 56-72	and/or 0-$100	and/or 15-30
110-129				8-12
130-149				13-16
150-199				21-28
200-249				30-40
250-299				52-65
300-374				80-100
375+				103-129

Middle offenders with more than 110 points do not have to be committed. They may be assigned community supervision under option B.
All A+ offenses 180-224 weeks

OR

OPTION B
STATUTORY OPTION

0-12 Months Community Supervision
0-150 Hours Community Service
0-100 Fine

The court may impose a determinate disposition of community supervision and/or up to 30 days confinement; in which case, if confinement has been imposed, the court shall state either aggravating or mitigating factors as set forth in RCW 13.40.150, as now or hereafter amended.

OR

OPTION C
MANIFEST INJUSTICE

If the court determines that a disposition under A or B would effectuate a manifest injustice, the court shall sentence the juvenile to a maximum term and the provisions of *(m)RCW 13.40.030(5), as now or hereafter amended, shall be used to determine range.

JUVENILE SENTENCING STANDARDS
SCHEDULE D-3

This schedule may only be used for serious offenders. After the determination is made that a youth is a serious offender, the court has the discretion to select sentencing option A or B.

SERIOUS OFFENDER

OPTION A
STANDARD RANGE

Points	Institution Time
0-129	8-12 weeks
130-149	13-16 weeks
150-199	21-28 weeks
200-249	30-40 weeks
250-299	52-65 weeks
300-374	80-100 weeks
375+	103-129 weeks
All A+ Offenses	180-224 weeks

OR

OPTION B
MANIFEST INJUSTICE

A disposition outside the standard range shall be determined and shall be comprised of confinement or community supervision or a combination thereof. When a judge finds

a manifest injustice and imposes a sentence of confinement exceeding 30 days, the court shall sentence the juvenile to a maximum term, and the provisions of *(7)RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. [1989 c 407 § 7.]

Reviser's note: *(1) The reference to "Glue Sniffing (9.47A.050)" appears to be erroneous. Reference to "Unlawful Inhalation (9.47A.020)" was apparently intended.

*(2) The reference to "Committing Crime when Armed (9.41.025)" is apparently erroneous in that RCW 9.41.025 was repealed effective July 1, 1984.

*(3) The reference to "Custodial Interference (9A.40.050)" is apparently erroneous in that RCW 9A.40.050 was repealed by 1984 c 95 § 7.

*(4) RCW 9.23.010 was repealed by 1989 c 373 § 28.

*(5) "Public Indecency" is now called "Indecent Exposure."

*(6) The reference to "Forgery (9A.56.020)" is apparently erroneous. RCW 9A.56.020 pertains to theft while RCW 9A.60.020 pertains to forgery.

*(7) RCW 13.40.030 was amended by 1989 c 407, changing subsection (5) to (2).

13.40.038 County juvenile detention facilities—Policy—Detention and risk assessment standards. It is the policy of this state that all county juvenile detention facilities provide a humane, safe, and rehabilitative environment and that unadjudicated youth remain in the community whenever possible, consistent with public safety and the provisions of chapter 13.40 RCW.

The counties shall develop and implement detention intake standards and risk assessment standards to determine whether detention is warranted and if so whether the juvenile should be placed in secure, nonsecure, or home detention to implement the goals of this section. Inability to pay for a less restrictive detention placement shall not be a basis for denying a respondent a less restrictive placement in the community. The detention and risk assessment standards shall be developed and implemented no later than December 31, 1992. [1992 c 205 § 105; 1986 c 288 § 7.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Severability—1986 c 288: See note following RCW 13.32A.050.

13.40.040 Taking juvenile into custody, grounds—Detention of, grounds—Release on bond, conditions—Bail jumping. (1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or

(c) Pursuant to a court order that the juvenile be held as a material witness; or

(d) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

(3) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

(4) A juvenile detained under this section may be released upon posting bond set by the court. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping. [1979 c 155 § 57; 1977 ex.s. c 291 § 58.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.050 Detention procedures—Notice of hearing—Conditions of release—Consultation with parent, guardian, or custodian. (1) When a juvenile taken into custody is held in detention:

(a) An information, a community supervision modification or termination of diversion petition, or a parole modification petition shall be filed within seventy-two hours, Saturdays, Sundays, and holidays excluded, or the juvenile shall be released; and

(b) A detention hearing, a community supervision modification or termination of diversion petition, or a parole modification petition shall be held within seventy-two hours, Saturdays, Sundays, and holidays excluded, from the time of filing the information or petition, to determine whether continued detention is necessary under RCW 13.40.040.

(2) Notice of the detention hearing, stating the time, place, and purpose of the hearing, and stating the right to counsel, shall be given to the parent, guardian, or custodian if such person can be found and shall also be given to the juvenile if over twelve years of age.

(3) At the commencement of the detention hearing, the court shall advise the parties of their rights under this chapter and shall appoint counsel as specified in this chapter.

(4) The court shall, based upon the allegations in the information, determine whether the case is properly before it or whether the case should be treated as a diversion case under RCW 13.40.080. If the case is not properly before the court the juvenile shall be ordered released.

(5) Notwithstanding a determination that the case is properly before the court and that probable cause exists, a juvenile shall at the detention hearing be ordered released on the juvenile's personal recognizance pending further hearing unless the court finds detention is necessary under RCW 13.40.040 as now or hereafter amended.

(6) If detention is not necessary under RCW 13.40.040, as now or hereafter amended, the court shall impose the most appropriate of the following conditions or, if necessary, any combination of the following conditions:

(a) Place the juvenile in the custody of a designated person agreeing to supervise such juvenile;

(b) Place restrictions on the travel of the juvenile during the period of release;

(c) Require the juvenile to report regularly to and remain under the supervision of the juvenile court;

(d) Impose any condition other than detention deemed reasonably necessary to assure appearance as required; or

(e) Require that the juvenile return to detention during specified hours.

(7) If the parent, guardian, or custodian of the juvenile in detention is available, the court shall consult with them prior to a determination to further detain or release the juvenile or treat the case as a diversion case under RCW 13.40.080. [1992 c 205 § 106; 1979 c 155 § 58; 1977 ex.s. c 291 § 59.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.060 Jurisdiction of actions—Transfer of case and records, when—Change in venue, grounds. (1) All actions under this chapter shall be commenced and tried in the county where any element of the offense was committed except as otherwise specially provided by statute. In cases in which diversion is provided by statute, venue is in the county in which the juvenile resides or in the county in which any element of the offense was committed.

(2) The case and copies of all legal and social documents pertaining thereto may in the discretion of the court be transferred to the county where the juvenile resides for a disposition hearing. All costs and arrangements for care and transportation of the juvenile in custody shall be the responsibility of the receiving county as of the date of the transfer of the juvenile to such county, unless the counties otherwise agree.

(3) The case and copies of all legal and social documents pertaining thereto may in the discretion of the court be transferred to the county in which the juvenile resides for supervision and enforcement of the disposition order. The court of the receiving county has jurisdiction to modify and enforce the disposition order.

(4) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when there is reason to believe that an impartial proceeding cannot be held in the county in which the proceeding was begun. [1989 c 71 § 1; 1981 c 299 § 6; 1979 c 155 § 59; 1977 ex.s. c 291 § 60.]

Effective date—1989 c 71: "This act shall take effect September 1, 1989." [1989 c 71 § 2.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.070 Complaints alleging offenses—Screening by prosecutor—Filing information—Diversion of case—Motion to modify community supervision—Notification of parent or guardian—Probation counselor may act for prosecutor—Referral to mediation or victim offender reconciliation programs. (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1) (a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. If the prosecutor finds that the requirements of subsection (1) (a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.440(2) as a crime against persons, or any other offense listed in RCW 13.40.020(1) (b) or (c); or

(b) An alleged offender is accused of a felony and has a criminal history of at least one class A or class B felony, or two class C felonies, or at least two gross misdemeanors, or at least two misdemeanors and one additional misdemeanor or gross misdemeanor, or at least one class C felony and one misdemeanor or gross misdemeanor; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has three or more diversions on the alleged offender's criminal history.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense(s) in combination with the alleged offender's criminal history do not exceed two offenses or violations and do not include any felonies: PROVIDED, That if the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (7) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversionary interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversionary unit, the victim shall be notified of the referral and informed how to contact the unit.

(9) The responsibilities of the prosecutor under subsections (1) through (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(10) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims. [1992 c 205 § 107; 1989 c 407 § 9; 1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.080 Diversion agreement—Scope—Modification—Limitations—Divertee's rights—Diversionary unit's powers and duties—Provision of interpreters—Use of fines. (1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversionary unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by the victim, and to an amount the juvenile has the means or potential means to pay;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency: PROVIDED, That the state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions; and

(d) A fine, not to exceed one hundred dollars. In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed.

(3) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with victims who have contacted the diversionary unit and, to the extent possible, involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(4) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee. Any restitution assessed during its term may not exceed an amount which the juvenile could be reasonably expected to pay during this period. If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

(5) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(6) Divertees and potential divertees shall be afforded due process in all contacts with a diversionary unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(7) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(8) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(9) The diversion unit may refer a juvenile to community-based counseling or treatment programs.

(10) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by *RCW 13.40.020(9) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(11) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

(a) The fact that a charge or charges were made;

(b) The fact that a diversion agreement was entered into;

(c) The juvenile's obligations under such agreement;

(d) Whether the alleged offender performed his or her obligations under such agreement; and

(e) The facts of the alleged offense.

(12) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. When a diversionary unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(13) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection shall include the authority to refer the juvenile to community-based counseling or treatment programs. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by *RCW 13.40.020(9) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversionary unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(14) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(15) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community service. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(16) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section. [1992 c 205 § 108; 1985 c 73 § 2; 1983 c 191 § 16; 1981 c 299 § 8; 1979 c 155 § 61; 1977 ex.s. c 291 § 62.]

***Reviser's note:** This reference should be to RCW 13.40.020(6). The section that renumbered subsection (6) as subsection (9) was vetoed. See 1992 c 205 § 2.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—1985 c 73: See note following RCW 13.40.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severabllity—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.090 Prosecuting attorney as party to juvenile court proceedings—Exception, procedure. The county prosecuting attorney shall be a party to all juvenile court proceedings involving juvenile offenders or alleged juvenile offenders.

The prosecuting attorney may, after giving appropriate notice to the juvenile court, decline to represent the state of Washington in juvenile court matters except felonies unless requested by the court on an individual basis to represent the state at an adjudicatory hearing in which case he or she shall participate. When the prosecutor declines to represent the state, then such function may be performed by the juvenile court probation counselor authorized by the court or local court rule to serve as the prosecuting authority.

If the prosecuting attorney elects not to participate, the prosecuting attorney shall file with the county clerk each year by the first Monday in July notice of intent not to participate. In a county wherein the prosecuting attorney has elected not to participate in juvenile court, he or she shall not thereafter until the next filing date participate in juvenile court proceedings unless so requested by the court on an individual basis, in which case the prosecuting attorney shall participate. [1977 ex.s. c 291 § 63.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.100 Summons or other notification issued upon filing of information—Procedure—Order to take juvenile into custody—Contempt of court, when. (1) Upon the filing of an information the alleged offender shall be notified by summons, warrant, or other method approved by the court of the next required court appearance.

(2) If notice is by summons, the clerk of the court shall issue a summons directed to the juvenile, if the juvenile is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons.

(3) A copy of the information shall be attached to each summons.

(4) The summons shall advise the parties of the right to counsel.

(5) The judge may endorse upon the summons an order directing the parents, guardian, or custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the juvenile needs to be taken into custody pursuant to RCW 13.34.050, as now or hereafter amended, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the juvenile into custody and take the juvenile to the place of detention or shelter designated by the court.

(7) Service of summons may be made under the direction of the court by any law enforcement officer or probation counselor.

(8) If the person summoned as herein provided fails without reasonable cause to appear and abide the order of the court, the person may be proceeded against as for contempt of court. [1979 c 155 § 62; 1977 ex.s. c 291 § 64.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.110 Hearing on question of declining jurisdiction—Held, when—Findings. (1) The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction. Unless waived by the court, the parties, and their counsel, a decline hearing shall be held where:

(a) The respondent is fifteen, sixteen, or seventeen years of age and the information alleges a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony; or

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree.

(2) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(3) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing. [1990 c 3 § 303; 1988 c 145 § 18; 1979 c 155 § 63; 1977 ex.s. c 291 § 65.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.120 Hearings—Time and place. All hearings may be conducted at any time or place within the limits of the judicial district, and such cases may not be heard in conjunction with other business of any other division of the superior court. [1981 c 299 § 9; 1979 c 155 § 64; 1977 ex.s. c 291 § 66.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.130 Procedure upon plea of guilty or not guilty to information allegations—Adjudicatory and disposition hearing—Disposition standards used in sentencing. (1) The respondent shall be advised of the allegations in the information and shall be required to plead guilty or not guilty to the allegation(s). The state or the respondent may make preliminary motions up to the time of the plea.

(2) If the respondent pleads guilty, the court may proceed with disposition or may continue the case for a dispositional hearing. If the respondent denies guilt, an adjudicatory hearing date shall be set.

(3) At the adjudicatory hearing it shall be the burden of the prosecution to prove the allegations of the information beyond a reasonable doubt.

(4) The court shall record its findings of fact and shall enter its decision upon the record. Such findings shall set forth the evidence relied upon by the court in reaching its decision.

(5) If the respondent is found not guilty he or she shall be released from detention.

(6) If the respondent is found guilty the court may immediately proceed to disposition or may continue the case for a dispositional hearing. Notice of the time and place of the continued hearing may be given in open court. If notice is not given in open court to a party, the party shall be notified by mail of the time and place of the continued hearing.

(7) The court following an adjudicatory hearing may request that a predisposition study be prepared to aid the court in its evaluation of the matters relevant to disposition of the case.

(8) The disposition hearing shall be held within fourteen days after the adjudicatory hearing or plea of guilty unless good cause is shown for further delay, or within twenty-one days if the juvenile is not held in a detention facility, unless good cause is shown for further delay.

(9) In sentencing an offender, the court shall use the disposition standards in effect on the date of the offense. [1981 c 299 § 10; 1979 c 155 § 65; 1977 ex.s. c 291 § 67.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.135 Sexual motivation special allegation—Procedures. (1) The prosecuting attorney shall file a special allegation of sexual motivation in every juvenile offense other than sex offenses as defined in RCW 9.94A.030(29) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably consistent defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a juvenile case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the juvenile committed the offense with a sexual motivation. The court shall make a finding of fact of whether or not the sexual motivation was present at the time of the commission of the offense. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(29) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of "sexual motivation" without approval of the court through an order of dismissal. The court shall not dismiss the special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [1990 c 3 § 604.]

Effective date—Application—1990 c 3 §§ 601-605: See note following RCW 9.94A.127.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.140 Juveniles entitled to usual judicial rights—Notice of—Open court—Privilege against self-incrimination—Waiver of rights, when. (1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefor. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide.

(3) The right to counsel includes the right to the appointment of experts necessary, and the experts shall be required pursuant to the procedures and requirements established by the supreme court.

(4) Upon application of a party, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing, or such subpoenas may be issued by an attorney of record.

(5) All proceedings shall be transcribed verbatim by means which will provide an accurate record.

(6) The general public and press shall be permitted to attend any hearing unless the court, for good cause, orders a particular hearing to be closed. The presumption shall be that all such hearings will be open.

(7) In all adjudicatory proceedings before the court, all parties shall have the right to adequate notice, discovery as provided in criminal cases, opportunity to be heard, confrontation of witnesses except in such cases as this chapter expressly permits the use of hearsay testimony, findings based solely upon the evidence adduced at the hearing, and an unbiased fact-finder.

(8) A juvenile shall be accorded the same privilege against self-incrimination as an adult. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence at an adjudicatory hearing over objection. Evidence illegally seized or obtained may not be received in evidence over

objection at an adjudicatory hearing to prove the allegations against the juvenile if the evidence would be inadmissible in an adult criminal proceeding. An extrajudicial admission or confession made by the juvenile out of court is insufficient to support a finding that the juvenile committed the acts alleged in the information unless evidence of a corpus delicti is first independently established in the same manner as required in an adult criminal proceeding.

(9) Waiver of any right which a juvenile has under this chapter must be an express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived.

(10) Whenever this chapter refers to waiver or objection by a juvenile, the word juvenile shall be construed to refer to a juvenile who is at least twelve years of age. If a juvenile is under twelve years of age, the juvenile's parent, guardian, or custodian shall give any waiver or offer any objection contemplated by this chapter. [1981 c 299 § 11; 1979 c 155 § 66; 1977 ex.s. c 291 § 68.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.145 Payment of fees for legal services by publicly funded counsel—Hearing—Order or decree—Entering and enforcing judgments. Upon disposition or at the time of a modification the court may order the juvenile or a parent or another person legally obligated to support the juvenile to appear, and the court may inquire into the ability of those persons to pay a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel.

If, after hearing, the court finds the juvenile, parent, or other legally obligated person able to pay part or all of the attorney's fees, the court may enter such order or decree as is equitable and may enforce the order or decree by execution, or in any way in which a court of equity may enforce its decrees.

In no event may the court order an amount to be paid for attorneys' fees that exceeds the average per case fee allocation for juvenile proceedings in the county where the services have been provided.

In any case in which there is no compliance with an order or decree of the court requiring a juvenile, parent, or other person legally obligated to support the juvenile to pay for legal services provided by publicly funded counsel, the court may, upon such person or persons being properly summoned or voluntarily appearing, proceed to inquire into the amount due upon the order or decree and enter judgment for that amount against the defaulting party or parties. Judgment shall be docketed in the same manner as are other judgments for the payment of money.

The county in which such judgments are entered shall be denominated the judgment creditor, and the judgments may be enforced by the prosecuting attorney of that county. Any moneys recovered thereon shall be paid into the registry of the court and shall be disbursed to such person, persons, agency, or governmental entity as the court finds entitled thereto.

Such judgments shall remain valid and enforceable for a period of ten years subsequent to entry. [1984 c 86 § 1.]

13.40.150 Disposition hearing—Scope—Factors to be considered prior to entry of dispositional order. (1) In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. The youth or the youth's counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available, but sources of confidential information need not be disclosed. The prosecutor and counsel for the juvenile may submit recommendations for disposition.

(2) For purposes of disposition:

(a) Violations which are current offenses count as misdemeanors;

(b) Violations may not count as part of the offender's criminal history;

(c) In no event may a disposition for a violation include confinement.

(3) Before entering a dispositional order as to a respondent found to have committed an offense, the court shall hold a disposition hearing, at which the court shall:

(a) Consider the facts supporting the allegations of criminal conduct by the respondent;

(b) Consider information and arguments offered by parties and their counsel;

(c) Consider any predisposition reports;

(d) Consult with the respondent's parent, guardian, or custodian on the appropriateness of dispositional options under consideration and afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

(e) Allow the victim or a representative of the victim and an investigative law enforcement officer to speak;

(f) Determine the amount of restitution owing to the victim, if any;

(g) Determine whether the respondent is a serious offender, a middle offender, or a minor or first offender;

(h) Consider whether or not any of the following mitigating factors exist:

(i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;

(ii) The respondent acted under strong and immediate provocation;

(iii) The respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;

(iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

(v) There has been at least one year between the respondent's current offense and any prior criminal offense;

(i) Consider whether or not any of the following aggravating factors exist:

(i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

(ii) The offense was committed in an especially heinous, cruel, or depraved manner;

(iii) The victim or victims were particularly vulnerable;

(iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

(v) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127;

(vi) The respondent was the leader of a criminal enterprise involving several persons; and

(vii) There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history.

(4) The following factors may not be considered in determining the punishment to be imposed:

(a) The sex of the respondent;

(b) The race or color of the respondent or the respondent's family;

(c) The creed or religion of the respondent or the respondent's family;

(d) The economic or social class of the respondent or the respondent's family; and

(e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.

(5) A court may not commit a juvenile to a state institution solely because of the lack of facilities, including treatment facilities, existing in the community. [1992 c 205 § 109; 1990 c 3 § 605; 1981 c 299 § 12; 1979 c 155 § 67; 1977 ex.s. c 291 § 69.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Application—1990 c 3 §§ 601-605: See note following RCW 9.94A.127.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (1) When the respondent is found to be a serious offender, the court shall commit the offender to the department for the standard range of disposition for the offense, as indicated in option A of schedule D-3, RCW 13.40.0357 except as provided in subsection (5) of this section.

If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option B of schedule D-3, RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2), as now or hereafter amended, shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230 as now or hereafter amended.

(2) Where the respondent is found to be a minor or first offender, the court shall order that the respondent serve a term of community supervision as indicated in option A or option B of schedule D-1, RCW 13.40.0357 except as provided in subsection (5) of this section. If the court determines that a disposition of community supervision would effectuate a manifest injustice the court may impose another disposition under option C of schedule D-1, RCW 13.40.0357. Except as provided in subsection (5) of this section, a disposition other than a community supervision may be imposed only after the court enters reasons upon which it bases its conclusions that imposition of community supervision would effectuate a manifest injustice. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

Except for disposition of community supervision or a disposition imposed pursuant to subsection (5) of this section, a disposition may be appealed as provided in RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition of community supervision or a disposition imposed pursuant to subsection (5) of this section may not be appealed under RCW 13.40.230 as now or hereafter amended.

(3) Where a respondent is found to have committed an offense for which the respondent declined to enter into a diversion agreement, the court shall impose a term of community supervision limited to the conditions allowed in a diversion agreement as provided in RCW 13.40.080(2) as now or hereafter amended.

(4) If a respondent is found to be a middle offender:

(a) The court shall impose a determinate disposition within the standard range(s) for such offense, as indicated in option A of schedule D-2, RCW 13.40.0357 except as provided in subsection (5) of this section: PROVIDED, That if the standard range includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement; or

(b) The court shall impose a determinate disposition of community supervision and/or up to thirty days confinement, as indicated in option B of schedule D-2, RCW 13.40.0357 in which case, if confinement has been imposed, the court shall state either aggravating or mitigating factors as set forth in RCW 13.40.150 as now or hereafter amended.

(c) Only if the court concludes, and enters reasons for its conclusions, that disposition as provided in subsection (4)(a) or (b) of this section would effectuate a manifest injustice, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

(d) A disposition pursuant to subsection (4)(c) of this section is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition pursuant to subsection (4) (a) or (b) of this section is not appealable under RCW 13.40.230 as now or hereafter amended.

(5) When a serious, middle, or minor first offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(a)(i) Frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, and the court may suspend the execution of the disposition and place the offender on community supervision for up to two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(b)(i) Devote time to a specific education, employment, or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community service, or any combination thereof; or

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (5), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (5) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the sentence. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(6) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(7) Except as provided for in subsection (5) of this section, the court shall not suspend or defer the imposition or the execution of the disposition.

(8) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

Severability—Application—1992 c 45: See notes following RCW 9.94A.151.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.180 Disposition order—Consecutive terms when two or more offenses—Limitations. Where a disposition is imposed on a youth for two or more offenses, the terms shall run consecutively, subject to the following limitations:

(1) Where the offenses were committed through a single act or omission, omission, or through an act or omission which in itself constituted one of the offenses and also was an element of the other, the aggregate of all the terms shall not exceed one hundred fifty percent of the term imposed for the most serious offense;

(2) The aggregate of all consecutive terms shall not exceed three hundred percent of the term imposed for the most serious offense; and

(3) The aggregate of all consecutive terms of community supervision shall not exceed two years in length, or require payment of more than two hundred dollars in fines or the performance of more than two hundred hours of community service. [1981 c 299 § 14; 1977 ex.s. c 291 § 72.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.185 Disposition order—Confinement under departmental supervision or in juvenile facility, when. Any term of confinement imposed for an offense which exceeds thirty days shall be served under the supervision of the department. If the period of confinement imposed for more than one offense exceeds thirty days but the term imposed for each offense is less than thirty days, the confinement may, in the discretion of the court, be served in a juvenile facility operated by or pursuant to a contract with the state or a county. [1981 c 299 § 15.]

13.40.190 Disposition order—Restitution for loss—Waiver or modification of restitution. (1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the amount, terms, and conditions of the restitution. Restitution may include the costs of counseling reasonably related to the offense. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. The court may not require the respondent to pay full or partial restitution if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay such restitution. In cases where an offender has been committed to the department for a period of confinement exceeding fifteen weeks, restitution may be waived.

(2) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(3) A respondent under obligation to pay restitution may petition the court for modification of the restitution order. [1987 c 281 § 5; 1985 c 257 § 2; 1983 c 191 § 9; 1979 c 155 § 69; 1977 ex.s. c 291 § 73.]

Effective date—1987 c 281: See note following RCW 7.68.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.200 Violation of order of restitution, community supervision, fines, penalty assessments, or confinement—Modification of order after hearing—Scope—Rights—Use of fines. (1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a wilful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community service hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community service.

(3)(a) If the court finds that a respondent has wilfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall

never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(b) If the violation of the terms of the order under (a) of this subsection is failure to pay fines, penalty assessments, complete community service, or make restitution, the term of confinement imposed under (a) of this subsection shall be assessed at a rate of one day of confinement for each twenty-five dollars or eight hours owed.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community service. The number of hours of community service in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section. [1986 c 288 § 5; 1983 c 191 § 15; 1979 c 155 § 70; 1977 ex.s. c 291 § 74.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.205 Release from physical custody, when—Authorized leaves—Leave plan and order—Notice. (1) A juvenile sentenced to a term of confinement to be served under the supervision of the department shall not be released from the physical custody of the department prior to the release date established under RCW 13.40.210 except as otherwise provided in this section.

(2) A juvenile serving a term of confinement under the supervision of the department may be released on authorized leave from the physical custody of the department only if consistent with public safety and if:

(a) Sixty percent of the minimum term of confinement has been served; and

(b) The purpose of the leave is to enable the juvenile:

(i) To visit the juvenile's family for the purpose of strengthening or preserving family relationships;

(ii) To make plans for parole or release which require the juvenile's personal appearance in the community and which will facilitate the juvenile's reintegration into the community; or

(iii) To make plans for a residential placement out of the juvenile's home which requires the juvenile's personal appearance in the community.

(3) No authorized leave may exceed seven consecutive days. The total of all pre-minimum term authorized leaves granted to a juvenile prior to final discharge from confinement shall not exceed thirty days.

(4) Prior to authorizing a leave, the secretary shall require a written leave plan, which shall detail the purpose of the leave and how it is to be achieved, the address at which the juvenile shall reside, the identity of the person responsible for supervising the juvenile during the leave, and a statement by such person acknowledging familiarity with the leave plan and agreeing to supervise the juvenile and to notify the secretary immediately if the juvenile violates any terms or conditions of the leave. The leave plan shall include such terms and conditions as the secretary deems appropriate and shall be signed by the juvenile.

(5) Upon authorizing a leave, the secretary shall issue to the juvenile an authorized leave order which shall contain the name of the juvenile, the fact that the juvenile is on leave from a designated facility, the time period of the leave, and the identity of an appropriate official of the department to contact when necessary. The authorized leave order shall be carried by the juvenile at all times while on leave.

(6) Prior to the commencement of any authorized leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will reside during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave.

(7) The secretary may authorize a leave, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the period of time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. In cases of emergency or medical leave the secretary may waive all or any portions of subsections (2)(a), (3), (4), (5), and (6) of this section.

(8) If requested by the juvenile's victim or the victim's immediate family, the secretary shall give notice of any leave to the victim or the victim's immediate family.

(9) A juvenile who violates any condition of an authorized leave plan may be taken into custody and returned to the department in the same manner as an adult in identical circumstances.

(10) Notwithstanding the provisions of this section, a juvenile placed in minimum security status may participate in work, educational, community service, or treatment programs in the community up to twelve hours a day if approved by the secretary. Such a release shall not be deemed a leave of absence.

(11) Subsections (6), (7), and (8) of this section do not apply to juveniles covered by RCW 13.40.215. [1990 c 3 § 103; 1983 c 191 § 10.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.210 Setting of release or discharge date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Parole officer's right of arrest. (1) The secretary shall, except in the case of a juvenile committed by a court to a term of confinement in a state institution outside the appropriate standard range for the offense(s) for which the juvenile was found to be guilty established pursuant to RCW 13.40.030, as now or hereafter amended, set a release or discharge date for each juvenile committed to its custody which shall be within the prescribed range to which a juvenile has been committed. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which

the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter: PROVIDED, That days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the end of each calendar year if any such early releases have occurred during that year as a result of excessive in-residence population. In no event shall a serious offender, as defined in RCW 13.40.020(1) be granted release under the provisions of this subsection.

(3) Following the juvenile's release pursuant to subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months. A parole program is mandatory for offenders released under subsection (2) of this section. The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal may require the juvenile to: (a) Undergo available medical or psychiatric treatment; (b) report as directed to a parole officer; (c) pursue a course of study or vocational training; (d) remain within prescribed geographical boundaries and notify the department of any change in his or her address; and (e) refrain from committing new offenses. After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (a) Continued supervision under the same conditions previously imposed; (b) intensified supervision with increased reporting requirements; (c) additional conditions of supervision authorized by this chapter; (d) except as provided in (e) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; and (e) the secretary may order any of the conditions or may return the offender to confinement in an institution for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest such person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [1990 c 3 § 304; 1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Intent—1985 c 257 § 4: "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.] Section 4 of this act consists of the 1985 c 257 amendment to RCW 13.40.210.

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.215 Juveniles found to have committed sex or violent offense—Notification of discharge, parole, leave, release, transfer, or escape—To whom given—Definitions. (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ten days before discharge, parole, or any other authorized leave or release, or before transfer to a community residential facility, the secretary shall send written notice of the discharge, parole, authorized leave or release, or transfer of a juvenile found to have committed a violent offense or a sex offense, to the following:

(i) The chief of police of the city, if any, in which the juvenile will reside; and

(ii) The sheriff of the county in which the juvenile will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific juvenile:

(i) The victim of the offense for which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the juvenile in any court proceedings involving the offense; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the juvenile. The notice to the chief of police or the sheriff shall include the identity of the juvenile, the residence where the juvenile will reside, the identity of the person, if any, responsible for supervising the juvenile, and the time period of any authorized leave.

(2)(a) If a juvenile found to have committed a violent offense or a sex offense escapes from a facility of the department, the secretary shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the juvenile resided immediately before the juvenile's arrest. If previously requested, the secretary shall also notify the witnesses and the victim of the offense which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide. If the juvenile is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(b) The secretary may authorize a leave, for a juvenile found to have committed a violent or sex offense, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. Prior to the commencement of an emergency or medical leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will be during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave. If previously requested, the department shall also notify the witnesses and victim of the offense which the juvenile was found to have committed or the victim's next of kin if the offense was a homicide.

In case of an emergency or medical leave the secretary may waive all or any portion of the requirements for leaves pursuant to RCW 13.40.205 (2)(a), (3), (4), and (5).

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The secretary shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children. [1990 c 3 § 101.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.217 Juveniles adjudicated of sex offenses—Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning juveniles adjudicated of sex offenses. [1990 c 3 § 102.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

13.40.220 Costs of support, treatment and confinement, order for—Contempt of court, when. Whenever legal custody of a child is vested in someone other than his or her parents, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum representing in whole or in part the costs of support, treatment, and confinement of the child after the decree is entered. If the parent or other legally obligated person wilfully fails or refuses to pay such sum, the court may proceed against such person for contempt. [1977 ex.s. c 291 § 76.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.230 Appeal from order of disposition—Jurisdiction—Procedure—Scope—Release pending appeal. (1) Dispositions reviewed pursuant to RCW 13.40.160, as now or hereafter amended, shall be reviewed in the appropriate division of the court of appeals.

An appeal under this section shall be heard solely upon the record that was before the disposition court. No written briefs may be required, and the appeal shall be heard within thirty days following the date of sentencing and a decision rendered within fifteen days following the argument. The supreme court shall promulgate any necessary rules to effectuate the purposes of this section.

(2) To uphold a disposition outside the standard range, or which imposes confinement for a minor or first offender, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincingly support the conclusion that a disposition within the range, or nonconfinement for a minor or first offender, would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

(3) If the court does not find subsection (2)(a) of this section it shall remand the case for disposition within the standard range or for community supervision without

confinement as would otherwise be appropriate pursuant to this chapter.

(4) If the court finds subsection (2)(a) but not subsection (2)(b) of this section it shall remand the case with instructions for further proceedings consistent with the provisions of this chapter.

(5) Pending appeal, a respondent may not be committed or detained for a period of time in excess of the standard range for the offense(s) committed or sixty days, whichever is longer. The disposition court may impose conditions on release pending appeal as provided in RCW 13.40.040(4) and 13.40.050(6). Upon the expiration of the period of commitment or detention specified in this subsection, the court may also impose such conditions on the respondent's release pending disposition of the appeal.

(6) Appeal of a disposition under this section does not affect the finality or appeal of the underlying adjudication of guilt. [1981 c 299 § 16; 1979 c 155 § 72; 1977 ex.s. c 291 § 77.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.240 Construction of RCW references to juvenile delinquents or juvenile delinquency. All references to juvenile delinquents or juvenile delinquency in other chapters of the Revised Code of Washington shall be construed as meaning juvenile offenders or the commitment of an offense by juveniles as defined by this chapter. [1977 ex.s. c 291 § 78.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.250 Traffic infraction cases. A traffic infraction case involving a juvenile under the age of sixteen may be diverted in accordance with the provisions of this chapter or filed in juvenile court.

(1) If a notice of traffic infraction is filed in juvenile court, the juvenile named in the notice shall be afforded the same due process afforded to adult defendants in traffic infraction cases.

(2) A monetary penalty imposed upon a juvenile under the age of sixteen who is found to have committed a traffic infraction may not exceed one hundred dollars. At the juvenile's request, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the prevailing state minimum wage per hour.

(3) A diversion agreement entered into by a juvenile referred pursuant to this section shall be limited to thirty hours of community service, or educational or informational sessions.

(4) If a case involving the commission of a traffic infraction or offense by a juvenile under the age of sixteen has been referred to a diversion unit, an abstract of the action taken by the diversion unit may be forwarded to the department of licensing in the manner provided for in RCW 46.20.270(2). [1980 c 128 § 16.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

13.40.265 Alcohol or drug violations. (1)(a) If a juvenile thirteen years of age or older is found by juvenile court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(b) Except as otherwise provided in (c) of this subsection, upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(c) If the offense is the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered, whichever is later. If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

(2)(a) If a juvenile enters into a diversion agreement with a diversion unit pursuant to RCW 13.40.080 concerning an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion unit shall notify the department of licensing within twenty-four hours after the diversion agreement is signed.

(b) If a diversion unit has notified the department pursuant to (a) of this subsection, the diversion unit shall notify the department of licensing when the juvenile has completed the agreement. [1989 c 271 § 116; 1988 c 148 § 2.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—1988 c 148: "The legislature finds that many persons under the age of eighteen unlawfully use intoxicating liquor and controlled substances. The use of these substances by juveniles can cause serious damage to their physical, mental, and emotional well-being, and in some instances results in life-long disabilities.

The legislature also finds that juveniles who unlawfully use alcohol and controlled substances frequently operate motor vehicles while under the influence of and impaired by alcohol or drugs. Juveniles who use these substances often have seriously impaired judgment and motor skills and pose an unduly high risk of causing injury or death to themselves or other persons on the public highways.

The legislature also finds that juveniles will be deterred from the unlawful use of alcohol and controlled substances if their driving privileges are suspended or revoked for using illegal drugs or alcohol." [1988 c 148 § 1.]

Severability—1988 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 148 § 10.]

13.40.280 Transfer of juvenile to department of corrections facility—Grounds—Hearing—Term—Retransfer to a facility for juveniles. (1) The secretary, with the consent of the secretary of the department of corrections, has the authority to transfer a juvenile presently or hereafter committed to the department of social and health

services to the department of corrections for appropriate institutional placement in accordance with this section.

(2) The secretary of the department of social and health services may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of social and health services shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.

(3) Assaults made against any staff member at a juvenile corrections institution that are reported to a local law enforcement agency shall require a hearing held by the department of social and health services review board within ten judicial working days. The board shall determine whether the accused juvenile offender represents a continuing and serious threat to the safety of others in the institution.

(4) Upon conviction in a court of law for custodial assault as defined in RCW 9A.36.100, the department of social and health services review board shall conduct a second hearing, within five judicial working days, to recommend to the secretary of the department of social and health services that the convicted juvenile be transferred to an adult correctional facility if the review board has determined the juvenile offender represents a continuing and serious threat to the safety of others in the institution.

The juvenile has the burden to show cause why the transfer to an adult correctional facility should not occur.

(5) A juvenile offender transferred to an institution operated by the department of corrections shall not remain in such an institution beyond the maximum term of confinement imposed by the juvenile court.

(6) A juvenile offender who has been transferred to the department of corrections under this section may, in the discretion of the secretary of the department of social and health services and with the consent of the secretary of the department of corrections, be transferred from an institution operated by the department of corrections to a facility for juvenile offenders deemed appropriate by the secretary. [1989 c 410 § 2; 1989 c 407 § 8; 1983 c 191 § 22.]

Reviser's note: This section was amended by 1989 c 407 § 8 and by 1989 c 410 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—1989 c 410: "The legislature recognizes the ever-increasing severity of offenses committed by juvenile offenders residing in this state's juvenile detention facilities and the increasing aggressive nature of detained juveniles due to drugs and gang-related violence. The purpose of this act is to provide necessary protection to state employees and juvenile residents of these institutions from assaults committed against them by juvenile detainees." [1989 c 410 § 1.]

13.40.285 Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement. A juvenile offender ordered to serve a term of confinement with the department of social and health services who is subsequently sentenced to the department of corrections may, with the consent of the department of corrections, be transferred by the secretary of social and health services to the department of corrections to serve the balance of the term of confinement ordered by the juvenile court. The juvenile and adult sentences shall be served consecutively. In no case shall the secretary credit time served as a result of an adult conviction against the term of confinement ordered by the juvenile court. [1983 c 191 § 23.]

13.40.290 Juvenile offenders structured residential program—Enhancement of services—Study—Expiration of section. (1) It is the intent of the legislature to establish a program that will benefit both the community and juvenile offenders by promoting the offenders' personal development and self-discipline, thereby making them more effective participants in society.

(2) Within available funds, the department of social and health services shall develop a juvenile offenders structured residential program for selected juvenile offenders. The program shall provide intensive training and rehabilitative programs for juvenile offenders. The department shall adopt rules for the operation, access, and successful completion of such programs.

(3) In order to serve significant portions of the sixty percent of juvenile justice clients in need of treatment for substance abuse, the department of social and health services shall, within available funds, provide enhancements to the eighteen county detention facilities in the state. The enhancement shall be used to develop an intensive, inpatient treatment component within the structure of county detention programs, to be modeled after the exodus program currently operated by the department's division of juvenile rehabilitation.

(4) In order to serve youth returning from institutional treatment programs who seek help for substance abuse, the department of social and health services shall, within available funds, enhance substance abuse services and coordination for each of six service regions to ensure effective use of existing and new services created by *this act, including direct service and consultation.

(5) No juvenile who suffers from any mental or physical problem which could endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the program.

(6) The department shall complete a study of the effectiveness of programs of the type created in this section by December 31, 1992.

(7) This section shall expire on July 1, 1993. [1989 c 271 § 115.]

***Reviser's note:** For codification of "this act" [1989 c 271], see Codification Tables, Volume 0.

Severability—1989 c 271: See note following RCW 9.94A.310.

13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday. (1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the

juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition; or

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday.

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older. [1986 c 288 § 6; 1983 c 191 § 17; 1981 c 299 § 17; 1979 c 155 § 73; 1975 1st ex.s. c 170 § 1. Formerly RCW 13.04.260.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.40.310 Transitional treatment program for gang and drug-involved juvenile offenders. (1) The department of social and health services may contract with a community-based nonprofit organization to establish a three-step transitional treatment program for gang and drug-involved juvenile offenders committed to the custody of the department under chapter 13.40 RCW. Any such program shall provide six to twenty-four months of treatment. The program shall emphasize the principles of self-determination, unity, collective work and responsibility, cooperative economics, and creativity. The program shall be culturally relevant and appropriate and shall include:

(a) A culturally relevant and appropriate institution-based program that provides comprehensive drug and alcohol services, individual and family counseling, and a wilderness experience of constructive group living, rigorous physical exercise, and academic studies;

(b) A culturally relevant and appropriate community-based structured group living program that focuses on individual goals, positive community involvement, coordinated drug and alcohol treatment, coordinated individual and family counseling, academic and vocational training, and employment in apprenticeship, internship, and entrepreneurial programs; and

(c) A culturally relevant and appropriate transitional group living program that provides support services, academic services, and coordinated individual and family counseling.

(2) Participation in any such program shall be on a voluntary basis.

(3) The department shall adopt rules as necessary to implement any such program. [1991 c 326 § 4.]

Finding—1991 c 326: "The legislature finds that a destructive lifestyle of drug and street gang activity is rapidly becoming prevalent among some of the state's youths. Gang and drug activity may be a culturally influenced phenomenon which the legislature intends public and private agencies to consider and address in prevention and treatment programs. Gang and drug-involved youths are more likely to become addicted to drugs or alcohol, live in poverty, experience high unemployment, be incarcerated, and die of violence than other youths." [1991 c 326 § 3.]

Part headings not law—Severability—1991 c 326: See RCW 71.36.900 and 71.36.901.

13.40.400 Applicability of RCW 10.01.040 to chapter. The provisions of RCW 10.01.040 apply to chapter 13.40 RCW. [1979 c 155 § 74.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.40.440 Chapter 9.92 RCW not to affect dispositions under juvenile justice act. See RCW 9.92.200.

13.40.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders. See RCW 13.04.450.

Chapter 13.50

KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

Sections

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access. (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the department of social and health services and its contracting agencies, and persons or public or private agencies having children committed to their custody;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Social file" means the juvenile court file containing the records and reports of the probation counselor;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court, upon proof presented, to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to insure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment, or to individuals or agencies engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(11). Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notorized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the juvenile disposition standards commission under RCW 13.40.025 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission. [1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

Severability—1990 c 246: See note following RCW 13.34.060.

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.050 Records relating to commission of juvenile offenses—Maintenance of and access or destruction. (1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (11) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(8) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(9) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(10) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (24) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(11) The court shall grant the motion to seal records made pursuant to subsection (10) of this section if it finds that:

(a) Two years have elapsed from the later of: (i) Final discharge of the person from the supervision of any agency charged with supervising juvenile offenders; or (ii) from the entry of a court order relating to the commission of a juvenile offense or a criminal offense;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense; and

(c) No proceeding is pending seeking the formation of a diversion agreement with that person.

(12) The person making a motion pursuant to subsection (10) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(13) If the court grants the motion to seal made pursuant to subsection (10) of this section, it shall, subject to subsection (24) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(14) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (24) of this section.

(15) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any conviction for any adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW for any juvenile adjudication of guilt for a class A offense or a sex offense as defined in RCW 9.94A.030.

(16) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (24) of this section, order the destruction of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(17) The court may grant the motion to destroy records made pursuant to subsection (16) of this section if it finds:

(a) The person making the motion is at least twenty-three years of age;

(b) The person has not subsequently been convicted of a felony;

(c) No proceeding is pending against that person seeking the conviction of a criminal offense; and

(d) The person has never been found guilty of a serious offense.

(18) A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case destroyed. The request shall be granted, subject to subsection (24) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

(19) If the court grants the motion to destroy records made pursuant to subsection (16) or (18) of this section, it shall, subject to subsection (24) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(20) The person making the motion pursuant to subsection (16) or (18) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(21) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(22) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(23) Any juvenile justice or care agency may, subject to the limitations in subsection (24) of this section and subparagraphs (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older, or is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(24) No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion,

conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(25) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. [1992 c 188 § 7; 1990 c 3 § 125; 1987 c 450 § 8; 1986 c 257 § 33; 1984 c 43 § 1; 1983 c 191 § 19; 1981 c 299 § 19; 1979 c 155 § 9.]

Rules of court: Superior Court Criminal Rules (CrR), generally. Discovery: CrR 4.7.

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access. (1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the state-wide juvenile court information system.

(4) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported suspected child abuse or neglect.

(5) A juvenile or his or her parent denied access to any records following an agency determination under subsection (4) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsections (4) (a) and (b) of this section.

(6) The person making a motion under subsection (5) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(7) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (4) of this section.

(8) Information concerning a juvenile or a juvenile's family contained in records covered by this section may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family. [1990 c 246 § 9; 1983 c 191 § 20; 1979 c 155 § 10.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.150 Confidential records—Expungement to protect due process rights. Nothing in this chapter shall be construed to prevent the expungement of any juvenile record ordered expunged by a court to preserve the due process rights of its subject. [1977 ex.s. c 291 § 13. Formerly RCW 13.04.276, see 1979 c 155 § 12.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective date—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.50.200 Records of motor vehicle operation violation forwarded. Notwithstanding any other provision of this chapter, whenever a child is arrested for a violation of any law, including municipal ordinances, regulating the operation of vehicles on the public highways, a copy of the traffic citation and a record of the action taken by the court shall be forwarded by the juvenile court to the department of licensing in the same manner as provided in RCW 46.20.270. [1979 c 155 § 13; 1977 ex.s. c 291 § 14. Formerly RCW 13.04.278.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective date—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.50.250 Records chapter applicable to. This chapter applies to all juvenile justice or care agency records created on or after July 1, 1978. [1979 c 155 § 11.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Chapter 13.60
MISSING CHILDREN CLEARINGHOUSE

Sections

13.60.010 Missing children clearinghouse—Hotline—Distribution of information. The Washington state patrol shall establish a missing children clearinghouse which shall include the maintenance and operation of a toll-free, twenty-four-hour telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of social and health services, and the general public regarding missing children. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children. The state patrol shall also maintain a regularly updated computerized link with national and other state-wide missing person systems or clearinghouses.

"Child" or "children," as used in this chapter, means an individual under eighteen years of age. [1985 c 443 § 22.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

13.60.020 Entry of information on missing children into missing person computer network—Access. Local law enforcement agencies shall file an official missing person report and enter biographical information into the state missing person computerized network within twelve hours after notification of a missing child is received under RCW 13.32A.050 (1), (3), or (4). The patrol shall collect such information as will enable it to retrieve immediately the following information about a missing child: Name, date of birth, social security number, fingerprint classification, relevant physical descriptions, and known associates and locations. Access to the preceding information shall be available to appropriate law enforcement agencies, and to parents and legal guardians, when appropriate. [1985 c 443 § 23.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

13.60.030 Information and education regarding missing children—Plan. The superintendent of public instruction shall meet semiannually with the Washington state patrol to develop a coordinated plan for the distribution of information and education of teachers and students in the school districts of the state regarding the missing children problem in the state. The superintendent of public instruction shall encourage local school districts to cooperate by providing the state patrol information on any missing children that may be identified within the district. [1985 c 443 § 24.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Chapter 13.70
SUBSTITUTE CARE OF CHILDREN—REVIEW BOARD SYSTEM

Sections

13.70.003 Substitute care of children—Citizen review board system—Purpose—Application of administrative procedures and standards. The legislature recognizes the importance of permanency and continuity to children and of fairness to parents in the provision of child welfare services.

The legislature intends to create a citizen review board system that will function in an advisory capacity to the judiciary, the department, and the legislature. The purpose of the citizen review board system is to:

(1) Provide periodic review of cases involving substitute care of children in a manner that complies with case review requirements and time lines imposed by federal laws pertaining to child welfare services;

(2) Improve the quality of case review provided to children in substitute care and their families; and

(3) Provide a means for community involvement in monitoring cases of children in substitute care.

In order to accomplish the foregoing purposes, the citizen review board system shall not be subject to the procedures and standards usually applicable to judicial and administrative hearings, except as otherwise specifically provided in this chapter and RCW 13.34.130, 13.34.145, and 26.44.115. Nothing in this chapter and RCW 13.34.130, 13.34.145, and 26.44.115 shall limit the ability of the department to utilize court review hearings and administrative reviews to meet the periodic review requirements imposed by federal law. [1989 1st ex.s. c 17 § 1.]

13.70.005 Periodic case review required (as amended by 1991 c 127). Periodic case review of all children in substitute care shall be

provided in ((~~at least one class 1 or higher county~~)) counties designated by the office of the administrator for the courts, in accordance with this chapter and within funding provided by the legislature.

The administrator for the courts shall coordinate and assist in the administration of the local citizen review board pilot program created by this chapter. [1991 c 127 § 2; 1989 1st ex.s. c 17 § 2.]

13.70.005 Periodic case review required (as amended by 1991 c 363). Periodic case review of all children in substitute care shall be provided in at least one ((~~class 1 or higher~~)) county with a population of one hundred twenty-five thousand or more, in accordance with this chapter.

The administrator for the courts shall coordinate and assist in the administration of the local citizen review board pilot program created by this chapter. [1991 c 363 § 14; 1989 1st ex.s. c 17 § 2.]

Reviser's note: RCW 13.70.005 was amended twice during the 1991 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

~~Purpose—~~Captions not law—1991 c 363: See notes following RCW 2.32.180.

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

(1) "Board" means the local citizen review board established pursuant to this chapter.

(2) "Child" means a person less than eighteen years of age.

(3) "Committee" means a local Indian child welfare advisory committee established pursuant to WAC 388-70-610, as now existing or hereafter amended by the department.

(4) "Conflict of interest" means that a person appointed to a board has a personal or pecuniary interest in a case being reviewed by that board.

(5) "Court" means the juvenile court.

(6) "Custodian" means that person who has legal custody of the child.

(7) "Department" means the department of social and health services.

(8) "Mature child" means a child who is able to understand and participate in the decision-making process without excessive anxiety or fear. A child twelve years old or over shall be rebuttably presumed to be a mature child.

(9) "Parent" or "parents" means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings.

(10) "Placement episode" means the period of time that begins with the date the child was removed from the home of the parent or legal custodian for the purposes of placement in substitute care and continues until the child returns home or an adoption decree or guardianship order is entered.

(11) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings, or documents pertaining to a case.

(12) "Resides" or "residence," when used in reference to the residence of a child, means the place where the child is actually living and not the legal residence or domicile of the parent or guardian.

(13) "Substitute care" means an out-of-home placement of a child for purposes related to the provision of child welfare services in accordance with chapter 74.13 RCW where the child is in the care, custody, and control of the department pursuant to a proceeding under chapter 13.34 RCW or pursuant to the written consent of the child's parent or parents or custodian. [1991 c 127 § 3; 1989 1st ex.s. c 17 § 3.]

13.70.020 Role of supreme court—Procedures. The supreme court is requested to:

(1) Establish and approve policies and procedures for the creation, recruitment, and operation of local citizen substitute care review boards;

(2) Approve and cause to have conducted training programs for board members;

(3) Provide consultation services on request to the boards;

(4) Establish reporting procedures to be followed by the boards to provide data for the evaluation of this chapter;

(5) Monitor the boards to ensure the impartiality of reviews and consistency of review standards throughout the state;

(6) Employ staff and provide for support services for the boards which shall be provided with staff through the local juvenile court in accordance with guidelines and procedures established by the supreme court;

(7) Direct the administrator for the courts to carry out duties prescribed by the supreme court relating to the administration of this chapter;

(8) Submit a report to the governor, the appropriate committees of the legislature, and the public on January 1, 1991, and biennially thereafter. The report shall address the following issues:

(a) State laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department and other agencies;

(b) Whether the boards are effective in bringing about permanence and appropriate care for children in the custody of the department and other agencies; and

(c) Whether adequate resources are available to permit the department to make reasonable efforts to keep families together.

(9) Adopt rules regarding:

(a) Procedures for providing written notice of the review to the department, any other child placement agency directly responsible for supervising the placement of the child, the child's parents and their attorneys, the child's legal custodians and their attorneys, mature children and their attorneys, the court-appointed attorney and guardian ad litem of any child, any prosecuting attorney or attorney general actively involved in the case, and the child's Indian tribe if the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. 1901, et seq. The notice shall include advice that persons receiving a notice may participate in the review and be accompanied by a representative;

(b) Procedures for removing members from the board for nonparticipation or other good cause. [1989 1st ex.s. c 17 § 4.]

13.70.030 Composition of board—Quorum. Each board shall be composed of five members appointed by the juvenile court. Three members shall constitute a quorum. [1989 1st ex.s. c 17 § 5.]

13.70.040 Guidelines for appointment to boards. Each board shall be appointed according to the following guidelines:

(1) Members of each board shall represent the various socioeconomic and ethnic groups of the area served.

(2) No person employed by a juvenile court or by the department for purposes related to the provision of child welfare services under chapter 74.13 RCW may serve on any board. No more than one person from any private agency or individual licensed by the department to provide child welfare services under chapter 74.13 RCW may serve on any board. A majority of the members on each board shall be persons who have no current professional or volunteer relationship with the department.

(3) No person who has had a child of his or her own, or one under his or her control, placed in substitute care within the last two years may serve on any board.

(4) All board members must be of good character and must demonstrate the understanding, ability, and judgment necessary to carry out the duties under this chapter.

(5) All board members shall serve a term of two years, except that if a vacancy occurs, a successor shall be appointed to serve the unexpired term. The terms of the initial members shall be staggered. Members shall be limited to two terms unless there are insufficient volunteers to replace them.

(6) Each board shall elect annually from its membership a chair and vice-chair to serve in the absence of the chair.

(7) Board members shall be domiciled within the counties of the appointing courts. [1989 1st ex.s. c 17 § 6.]

13.70.050 Training programs for board members. Prior to reviewing cases, all persons appointed to serve as board members shall participate in a training program established and approved by the supreme court. Board members shall participate in at least sixteen hours of training prior to reviewing cases and, thereafter, at least eight hours of training annually. [1989 1st ex.s. c 17 § 7.]

13.70.060 Confidentiality requirements. (1) Before beginning to serve on a board, each member shall swear or affirm to the court that the member shall keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a board who violates the duty imposed by subsection (1) of this section is subject to dismissal from the board and other penalties as provided by law. [1989 1st ex.s. c 17 § 8.]

13.70.070 Board access to records. Each board shall have access to the following information unless disclosure is otherwise specifically prohibited by law:

(1) Any records of the court which are pertinent to the case;

(2) Any records of the department pertaining to the child, the child's parents, or legal custodian; and

(3) Any records in the possession of an agency or other entity pertaining to the child, the child's parents, or legal custodian if such records are relevant to review of the case. [1989 1st ex.s. c 17 § 9.]

13.70.080 Review of case—Employee duties. The department and any other agency directly responsible for the care and placement of the child in substitute care shall require the employee who has primary case-planning responsibility for the case to attend the review. If the employee is unable to attend the review, an employee with knowledge of the case plan shall attend the review. [1989 1st ex.s. c 17 § 10.]

13.70.090 Board—Powers and duties—Immunity. (1) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The declaration of the member shall be recorded in the official records of the board and disclosed to all parties participating in the review. If, in the judgment of the majority of the local board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(2) The board shall keep accurate records, including a verbatim record of board reviews, and retain these records.

(3) The board may hold joint or separate reviews for groups of siblings.

(4) The board may disclose information to participants in the board review of a case. Before participating in a board review, each participant shall swear or affirm to the board that the participant shall keep confidential the information disclosed by the board in the case review and to disclose it only as authorized by law.

(5) Members of the board shall be held immune from suit and not be held liable in any civil action for recommendations made or activities performed under this chapter. [1989 1st ex.s. c 17 § 11.]

13.70.100 Child in substitute care—No dependency petition—Procedures—Review. (1) This section shall apply to cases where a child has been placed in substitute care pursuant to written parental consent and a dependency petition has not been filed under chapter 13.34 RCW. If a dependency petition is subsequently filed and the child's placement in substitute care continues pursuant to a court order entered in a proceeding under chapter 13.34 RCW, the provisions set forth in RCW 13.70.110 shall apply.

(2) Within thirty days following commencement of the placement episode, the department shall send a copy of the written parental consent to the juvenile court with jurisdiction over the geographical area in which the child resides.

(3) Within forty-five days following commencement of the placement episode, the court shall assign the child's case to a board and forward to the board a copy of the written parental consent to placement.

(4) The board shall review the case plan for each child in substitute care whose case is assigned to the board by the court. The review shall take place at times set by the board. The first review shall occur within ninety days following commencement of the placement episode. The second review shall occur within six months following commencement of the placement episode. The next review shall occur within one year following commencement of the placement

episode unless the child is no longer in substitute care or unless a guardianship order or adoption decree is entered.

(5) The board shall prepare written findings and recommendations with respect to:

(a) Whether reasonable efforts were made before the placement to prevent or eliminate the need for removal of the child from the home;

(b) Whether reasonable efforts have been made subsequent to the placement to make it possible for the child to be returned home;

(c) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(d) Whether there is a continuing need for and whether the placement is appropriate;

(e) Whether there has been compliance with the case plan;

(f) Whether progress has been made toward alleviating the need for placement;

(g) A likely date by which the child may be returned home or other permanent plan of care may be implemented; and

(h) Other problems, solutions, or alternatives the board determines should be explored.

(6) Within ten working days following the review, the board shall send a copy of its findings and recommendations to the child's parents and their attorneys, the child's custodians and their attorneys, mature children and their attorneys, and the department and other child placement agencies directly responsible for supervising the child's placement. If the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. 1901 et seq., a copy of the board's findings and recommendations shall also be sent to the child's Indian tribe.

(7) If the department is unable or unwilling to implement the board recommendations, the department shall submit to the board, within ten working days after receipt of the findings and recommendations, an implementation report setting forth the reasons why the department in unable or unwilling to implement the board's recommendations. The report will also set forth the case plan which the department intends to implement.

(8) The court shall not review the findings and recommendations of the board in cases where the child has been placed in substitute care with signed parental consent unless a dependency petition has been filed and the child has been taken into custody under RCW 13.34.050. [1989 1st ex.s. c 17 § 12.]

13.70.110 Child in substitute care under dependency proceeding—Procedures—Review. (1) This section shall apply to cases where a child has been placed in substitute care pursuant to a proceeding under chapter 13.34 RCW.

(2) Within forty-five days following commencement of the placement episode, the court shall assign the child's case to a board and forward to the board a copy of the dependency petition and any shelter care or dependency disposition orders which have been entered in the case by the court.

(3) The board shall review the case plan for each child whose case is assigned to the board by the court. The review shall take place at times set by the board. The first review shall occur within ninety days following commencement of the placement episode. The second review shall occur within six months following commencement of the placement episode. The next review shall occur within one year after commencement of the placement episode. Within eighteen months following commencement of the placement episode, a permanency planning hearing shall be held before the court in accordance with RCW 13.34.145. Thereafter, the court shall assign the child's case for a board review or a court review hearing pursuant to RCW 13.34.130(5). A board review or a court review hearing shall take place at least once every six months until the child is no longer within the jurisdiction of the court or no longer in substitute care or until a guardianship order or adoption decree is entered. After the permanency planning hearing, a court review hearing must occur at least once a year as provided in RCW 13.34.130. The board shall review any case where a petition to terminate parental rights has been denied, and such review shall occur as soon as practical but no later than forty-five days after the denial.

(4) The board shall prepare written findings and recommendations with respect to:

(a) Whether reasonable efforts were made before the placement to prevent or eliminate the need for removal of the child from the home, including whether consideration was given to removing the alleged offender, rather than the child, from the home;

(b) Whether reasonable efforts have been made subsequent to the placement to make it possible for the child to be returned home;

(c) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration has been given to placement with the child's relatives;

(d) Whether there is a continuing need for placement and whether the placement is appropriate;

(e) Whether there has been compliance with the case plan;

(f) Whether progress has been made toward alleviating the need for placement;

(g) A likely date by which the child may be returned home or other permanent plan of care may be implemented; and

(h) Other problems, solutions, or alternatives the board determines should be explored.

(5) Within ten working days following the review, the board shall send a copy of its findings and recommendations to the parents and their attorneys, the child's custodians and their attorneys, mature children and their attorneys, other attorneys or guardians ad litem appointed by the court to represent children, the department and other child placement agencies directly responsible for supervising the child's placement, and any prosecuting attorney or attorney general actively involved in the case. If the child is an Indian as defined in the Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., a copy of the board's findings and recommendations shall also be sent to the child's Indian tribe.

(6) If the department is unable or unwilling to implement the board recommendations, the department shall

submit to the board, within ten working days after receipt of the findings and recommendations, an implementation report setting forth the reasons why the department is unable or unwilling to implement the board's recommendations. The report will also set forth the case plan which the department intends to implement.

(7) Within forty-five days following the review, the board shall either:

(a) Schedule the case for further review by the board; or

(b) Submit to the court the board's findings and recommendations and the department's implementation reports, if any. If the board's recommendations are different from the existing court-ordered case plan, the board shall also file with the court a motion for a review hearing.

(8) Within ten days of receipt of the board's written findings and recommendations and the department's implementation report, if any, the court shall review the findings and recommendations and implementation reports, if any. The court may on its own motion schedule a review hearing.

(9) Unless modified by subsequent court order, the court-ordered case plan and court orders that are in effect at the time that a board reviews a case shall remain in full force and effect. Board findings and recommendations are advisory only and do not in any way modify existing court orders or court-ordered case plans.

(10) The findings and recommendations of the board and the department's implementation report, if any, shall become part of the department's case file and the court social file pertaining to the child.

(11) Nothing in this section shall limit or otherwise modify the rights of any party to a dependency proceeding to request and receive a court review hearing pursuant to the provisions of chapter 13.34 RCW or applicable court rules. [1991 c 127 § 5; 1989 1st ex.s. c 17 § 13.]

13.70.120 Board recommendations. In addition to reviewing individual cases of children in substitute care, boards may make recommendations to the court and the department concerning substitute care services, policies, procedures, and laws. [1989 1st ex.s. c 17 § 14.]

13.70.130 Funds from public and private sources. The administrator for the courts may apply for and receive funds from federal, local, and private sources for carrying out the purposes of this chapter. [1989 1st ex.s. c 17 § 15.]

13.70.140 Review by court. For cases which are subject to the foster care citizen review board pilot project under RCW 13.70.005, a court review hearing shall occur no later than eighteen months following commencement of the child's placement episode. Thereafter, court review hearings shall occur at least once every year until the child is no longer within the jurisdiction of the court or the child returns home or a guardianship order or adoption decree is entered. The court may review the case more frequently upon the court's own motion or upon the request of any party to the proceeding or the citizen review board assigned to the child's case. [1989 1st ex.s. c 17 § 16.]

13.70.150 Indian children—Local Indian child welfare advisory committee may serve as citizen review board. (1) If a case involves an Indian child, as defined by 25 U.S.C. Sec. 1903 or by department rule or policy, the court may appoint the local Indian child welfare advisory committee to serve as the citizen review board for the case unless otherwise requested by the child's tribe or by the local Indian child welfare advisory committee.

(2) The provisions of RCW 13.70.030, 13.70.040, 13.70.050, and 13.70.090(1) shall not apply to cases in which the court has appointed a committee to serve as a citizen review board. All other provisions of this chapter shall apply to such cases.

(3) Within ten days following court appointment of a committee to serve as a citizen review board for a particular case, the committee shall notify the court whether the committee will accept the case for review. If the committee accepts a case for review, the committee shall conduct the review in accordance with the requirements of this chapter except as otherwise provided in this section. If the committee does not accept a case for review, the court shall immediately reassign the case to an available board.

(4) The requirements of this chapter do not affect tribal sovereignty and shall not apply to cases involving Indian children who are under tribal court jurisdiction or wardship. [1991 c 127 § 1.]

Title 14
AERONAUTICS

Chapters

Aeronautics, department of transportation, division of: Chapter 47.68 RCW.

Aircraft excise tax: Chapter 82.48 RCW.

Aircraft maintenance work force: See note following RCW 43.31.005.

Assessment of air transportation companies for property tax purposes: Chapter 84.12 RCW.

Lease of county property for airport purposes: RCW 36.34.180.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Recycling: RCW 70.93.095.

Chapter 14.07
MUNICIPAL AIRPORTS—1941 ACT

Sections

Lease of property for airport purposes
county property: RCW 36.34.180.
port district property: RCW 53.08.080.

Municipal airports—1945 act: Chapter 14.08 RCW.

14.07.010 General powers—Municipal purpose and public use. Any city, town, port district or county is hereby authorized and empowered by and through their appropriate corporate authorities to acquire, maintain and operate, within or without the boundaries of the counties in which such city, town or port district is situated, sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes, and seaplanes for the aerial transportation of persons, property and mail or for use of military and naval aircraft, either jointly with another city, town, port district, county, the state of Washington, or the United States of America or severally, and the same is hereby declared to be a municipal purpose and a public use. [1941 c 21 § 1; Rem. Supp. 1941 § 2722-8. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

14.07.020 Acquisition of property—Eminent domain—Exemption. Such municipalities may also acquire by purchase, condemnation or lease, lands and other property for said purpose and dispose of such lands and other property, including property acquired by tax foreclosure proceedings, by sale or gift for public use to any city, town, port district, county, the state of Washington or the United States of America. Any city, town, port district and county is hereby empowered to acquire lands and other property for said purpose by the exercise of the power of eminent domain under the procedure that is or shall be provided by law for the condemnation and appropriation of private property for any of their respective corporate uses, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated, or otherwise held to public use: PROVIDED, HOWEVER, That nothing in this chapter shall authorize or entitle any city, town, port district or county to acquire by eminent domain any site or other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes for aerial transportation of persons, property, mail or military or naval aircraft, now or hereafter owned by any other city, town, port district or county. [1941 c 21 § 2; Rem. Supp. 1941 § 2722-9. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

14.07.030 Appropriation of money or conveyance of property to other municipalities. Any city, town, port district or county is authorized and empowered by and through their corporate authorities to appropriate sums of money and pay the same to any other city, town, port district or county, or deed and convey property already owned to such city, town, port district or county, for use in acquiring and maintaining sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes and seaplanes for the aerial transportation of persons, property, mail or military and naval aircraft and need not require consideration other than the benefit which may be derived by the city, town, port district or county on account of the use therefor and development of such property for said purposes. [1941 c 21 § 3; Rem. Supp. 1941 § 2722-10.]

14.07.040 Acts ratified and confirmed—Chapter cumulative. All acts of any such municipality in the exercise or attempted exercise of any powers herein conferred are hereby ratified and confirmed. The provisions of this chapter shall be cumulative and nothing herein contained shall abridge or limit the powers of the city, town, port district or county under existing law. [1941 c 21 § 4; Rem. Supp. 1941 § 2722-11. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

Chapter 14.08
MUNICIPAL AIRPORTS—1945 ACT

Sections

Lease of property for airport purposes
county property: RCW 36.34.180.
port district property: RCW 53.08.080.

Municipal airports—1941 act: Chapter 14.07 RCW.

14.08.010 Definition—"Municipality." (1) For the purpose of this chapter, unless herein specifically otherwise provided, the definitions of words, terms and phrases appearing in the state aeronautic department act of this state are hereby adopted.

(2) As used in this chapter, unless the context otherwise requires: "Municipality" means any county, city, town, airport district, or port district of this state; "airport purposes" means and includes airport, restricted landing area and other air navigation facility purposes. [1987 c 254 § 3; 1945 c 182 § 1; Rem. Supp. 1945 § 2722-30.]

Reviser's note: The state aeronautic department act (chapter 252, Laws of 1945) contained no definitions. It was repealed by chapter 165, Laws of 1947, codified herein as chapter 47.68 RCW.

14.08.015 Definitions. (1) "Airport charges" means charges of an airport operator for tie-downs, landing fees, the occupation of a hangar by an aircraft, and all other charges owing or to become owing under a contract between an aircraft owner and an airport operator or under an officially adopted regulation and/or tariff including, but not limited to, the cost of sale and related expenses.

(2) "Aircraft" means every species of aircraft or other mechanical device capable of being used for the purpose of aerial flight.

(3) "Airport operator" means any municipality as defined in RCW 14.08.010(2) or state agency which owns and/or operates an airport.

(4) "Owner" means (a) every natural person, firm, partnership, corporation, association, trust, estate, or organization, or agent thereof with actual or apparent authority, who expressly or impliedly contracts for use of airport property for landing, parking, or hangaring aircraft, and (b) includes the registered owner or owners and lienholders of record with the federal aviation administration. [1987 c 254 § 1.]

14.08.020 Airports a public purpose. The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public, governmental, county and municipal purposes and as a matter of public necessity. [1961 c 74 § 1; 1945 c 182 § 3; Rem. Supp. 1945 § 2722-32.]

14.08.030 Acquisition of property and easements—Eminent domain—Encroachments prohibited. (1) Every municipality is hereby authorized, through its governing body, to acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities and to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to construct, install and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers; and to purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(2) Property needed by a municipality for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift,

devise, lease or other means if such municipality is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation in the manner provided by the law under which such municipality is authorized to acquire like property for public purposes, full power to exercise the right of eminent domain for such purposes being hereby granted every municipality both within and without its territorial limits. If but one municipality is involved and the charter of such municipality prescribes a method of acquiring property by condemnation, proceedings shall be had pursuant to the provisions of such charter and may be followed as to property within or without its territorial limits. Any title to real property so acquired shall be in fee simple, absolute and unqualified in any way. The fact that the property needed has been acquired by the owner under power of eminent domain, shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of this chapter, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this state.

(4) It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of this section. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing area for which airport protection privileges have been acquired as in this section provided may go upon the land of others and remove any such encroachment without being liable for damages in so doing. [1945 c 182 § 2; Rem. Supp. 1945 § 2722-31. Formerly RCW 14.08.030, 14.08.040, 14.08.050, and 14.08.060.]

Reviser's note: Caption for 1945 c 182 § 2, reads as follows: "Municipalities may acquire airports."

14.08.070 Prior acquisition of airport property validated. Any acquisition of property within or without the limits of any municipality for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective. [1945 c 182 § 4; Rem. Supp. 1945 § 2722-33.]

14.08.080 Method of defraying cost. The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of this chapter may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine. The word "cost" includes awards in condemnation proceedings and rentals where an acquisition is by lease. [1945 c 182 § 5; Rem. Supp. 1945 § 2722-34.]

Reviser's note: Caption for 1945 c 182 § 5 reads as follows: "Purchase price and costs of improvement may be paid from appropriations or bond issues."

14.08.090 Issuance of bonds—Security. Any bonds to be issued by any municipality pursuant to the provisions of this chapter shall be authorized and issued in the manner and within the limitation prescribed by the Constitution and laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally, secured by the revenues of the airport, a mortgage on facilities, or a general tax levy as allowed by law, if the plan and system resolution are approved by the secretary of transportation or the division of municipal corporations. [1984 c 7 § 4; 1945 c 182 § 6; Rem. Supp. 1945 § 2722-35.]

Severability—1984 c 7: See note following RCW 47.01.141.

Levy of taxes: Chapter 84.52 RCW.

Public contracts and indebtedness: Title 39 RCW.

14.08.100 Raising of funds and disposition of revenue. (1) The governing bodies having power to appropriate moneys within the municipalities in this state for the purpose of acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under the provisions of this chapter, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, moneys sufficient to carry out therein the provisions of this chapter.

(2) The revenues obtained from the ownership, control and operation of any such airport or other air navigation facility shall be used, first, to finance the maintenance and operating expenses thereof, and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenues in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities, and to construct, maintain, lease, and otherwise finance buildings and facilities for industrial or commercial use: PROVIDED, That such portion of the airport

property to be devoted to said industrial or commercial use be first found by the governing body to be not required for airport purposes. [1959 c 231 § 1; 1945 c 182 § 7; Rem. Supp. 1945 § 2722-36. Formerly RCW 14.08.100, 14.08.110.]

14.08.112 Revenue bonds authorized—Purpose—Special fund—Redemption. (1) Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control and operate an airport or other air navigation facility, are hereby authorized to issue revenue bonds to provide part or all of the funds required to accomplish the powers granted them by chapter 14.08 RCW, and to construct, acquire by purchase or condemnation, equip, add to, extend, enlarge, improve, replace and repair airports, facilities and structures thereon including but not being limited to facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and other properties incidental to the operation of airports and to pay all costs incidental thereto.

The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on the bonds of each issue, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use and operation of the airport and all airport facilities and structures thereon and used and operated in connection therewith, including but not being limited to fees charged for all uses of the airport and facilities, rentals derived from leases of part or all of the airport, buildings and any or all air navigation facilities thereon, fees derived from concessions granted, and proceeds of sales of part or all of the airport and any or all buildings and structures thereon or equipment therefor, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Revenue bonds and the interest thereon shall be payable only out of and shall be a valid claim of the owner thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

Each revenue bond and any interest coupon attached thereto shall name the fund from which it is payable and state upon its face that it is only payable therefrom; however, all revenue bonds and any interest coupons issued under RCW 14.08.112 and 14.08.114 shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state. Each issue of revenue bonds may be bearer coupon bonds or may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030; shall be in the denomination or denominations the legislative body of the municipality shall deem proper; shall be payable at the time or times and at the place or places as shall be determined by the legislative body; shall bear interest at such rate or rates as authorized by the legislative body; shall be signed on behalf of the municipality by the chairman of the county legislative authority, mayor of the city or town, president of the port commission, and similar officer of any other municipality, shall be attested by the county auditor, the clerk or comptroller of the city or town, the secretary of the port commission, and similar officer of any other municipality, one of which signatures may be a facsimile signature, and shall have the seal of the municipality impressed thereon; any interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Revenue bonds shall be sold in the manner as the legislative body of the municipality shall deem best, either at public or private sale.

The municipality at the time of the issuance of revenue bonds may provide covenants as it may deem necessary to secure and guarantee the payment of the principal thereof and interest thereon, including but not being limited to covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing or guaranteeing the payment of the principal and interest, to establish and maintain rates, charges, fees, rentals and sales prices sufficient to pay the principal and interest and to maintain an adequate coverage over annual debt service, to appoint a trustee for the bond owners and a trustee for the safeguarding and disbursing of the proceeds of sale of the bonds and to fix the powers and duties of the trustee or trustees, and to make any and all other covenants as the legislative body may deem necessary to its best interest and that of its inhabitants to accomplish the most advantageous sale possible of the bonds. The legislative body may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with revenue bonds being issued and sold.

The legislative body of the municipality may include an amount for working capital and an amount necessary for interest during the period of construction of the airport or any facilities plus six months, in the principal amount of any revenue bond issue; if it deems it to the best interest of the municipality and its inhabitants, it may provide in any contract for the construction or acquisition of an airport or facilities that payment therefor shall be made only in revenue bonds at the par value thereof.

If the municipality or any of its officers shall fail to carry out any of its or their obligations, pledges or covenants made in the authorization, issuance and sale of bonds, the owner of any bond or the trustee may bring action against the municipality and/or said officers to compel the performance of any or all of the covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 16; 1970 ex.s. c 56 § 3; 1969 ex.s. c 232 § 2; 1957 c 53 § 1.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

14.08.114 Issuance of funding or refunding bonds authorized. When any municipality has outstanding revenue bonds or warrants payable solely from revenues derived from the ownership, control, use and operation of the airport and all its facilities and structures thereon used and operated in connection therewith, the legislative body thereof may provide for the issuance of funding or refunding bonds to fund or refund outstanding warrants or bonds or any part thereof at or before maturity, and may combine various outstanding warrants and various series and issues of

outstanding bonds in the amount thereof to be funded or refunded and may issue funding or refunding bonds to pay any redemption premium and interest payable on the outstanding revenue warrants or bonds being funded or refunded. The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on funding or refunding bonds, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use and operation of the airport and all airport facilities and structures thereon as provided in RCW 14.08.112, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Bonds and the interest thereon shall be payable only out of and shall be a valid claim of the owner thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

The net interest cost to maturity on funding or refunding bonds shall be at such rate or rates as shall be authorized by the legislative body.

The municipality may exchange funding or refunding bonds at par for the warrants or bonds which are being funded or refunded, or it may sell the funding or refunding bonds in the manner as it shall deem for the best interest of the municipality and its inhabitants, either at public or private sale. Funding or refunding bonds shall be governed by and issued under and in accordance with the provisions of RCW 14.08.112 with respect to revenue bonds unless there is a specific provision to the contrary in this section. [1983 c 167 § 17; 1970 ex.s. c 56 § 4; 1969 ex.s. c 232 § 3; 1957 c 53 § 2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

14.08.116 Port district revenue bond financing powers not repealed or superseded. Nothing in RCW 14.08.112 and 14.08.114 shall repeal or supersede revenue bond financing powers otherwise granted to port districts under the provisions of chapter 53.40 RCW. [1957 c 53 § 3.]

14.08.118 Revenue warrants authorized. Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control and operate an airport, or other air navigation facility, may issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of RCW 14.08.112 as now or hereafter amended relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants.

Revenue warrants so issued shall not constitute a general indebtedness of the municipality. [1971 ex.s. c 176 § 1.]

14.08.120 Specific powers of municipalities operating airports. In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: PROVIDED, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: PROVIDED, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section. [1990 c 215 § 1; 1984 c 7 § 5; 1961 c 74 § 2; 1959 c 231 § 2; 1957 c 14 § 1. Prior: 1953 c 178 § 1; 1945 c 182 § 8; Rem. Supp. 1945 § 2722-37. Formerly RCW 14.08.120 through 14.08.150 and 14.08.320.]

Severability—1984 c 7: See note following RCW 47.01.141.

Continuation of existing law—1957 c 14: "The provisions of section 1 of this act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions, nor as affecting any proceeding instituted thereunder." [1957 c 14 § 2.] This applies to RCW 14.08.120.

Validating—1957 c 14: "The provisions of section 1 of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 14.08.120 through 14.08.150 or 14.08.320 are hereby ratified, validated and confirmed." [1957 c 14 § 3.]

Appointment of police officers by port districts operating airports: RCW 53.08.280.

14.08.122 Adoption of regulations by airport operator for airport rental and use and collection of charges. An airport operator may adopt all regulations necessary for rental and use of airport facilities and for the expeditious collection of airport charges. The regulations may also establish procedures for the enforcement of these regulations by the airport operator. The regulations shall include the following:

(1) Procedures authorizing airport personnel to take reasonable measures including, but not limited to, the use of chains, ropes, and locks to secure aircraft within the airport facility so that the aircraft are in the possession and control of the airport operator and cannot be removed from the

airport. These procedures may be used if an owner hangaring or parking an aircraft at the airport fails to pay the airport charges owed and the account is at least sixty days delinquent. At the time of securing the aircraft, an authorized airport employee shall attach to the aircraft a readily visible notice and shall send a copy of the notice to the owner at his or her last known address by registered mail, return receipt requested, and a copy of the notice by first class mail. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A reasonable description of the aircraft;

(c) The identity of the authorized employee;

(d) The amount of airport charges owing;

(e) A statement that if the account is not paid in full within one hundred eighty days from the time the notice was attached the aircraft may be sold at public auction to satisfy the airport charges;

(f) The time and place of sale;

(g) A statement of the owner's right to commence legal proceedings to contest the charges owing and to have the aircraft released upon posting of an adequate cash bond or other security; and

(h) The address and telephone number where additional information may be obtained concerning the release of the aircraft.

(2) Procedures authorizing airport personnel at their discretion to place aircraft in an area within the airport operator's control for storage with private persons under the airport operator's control as bailees of the airport facility. Reasonable cost of any such procedure shall be paid by the aircraft's owner.

(3) If an aircraft is moved under conditions authorized under this section the owner who is obligated for hangaring or parking or other airport charges may regain possession of the aircraft by:

(a) Making arrangements satisfactory with the airport operator for the immediate removal of the aircraft from the airport's hangar, or making arrangements for authorized parking; and

(b) By making payment to the operator of all airport charges or by posting with the operator a sufficient cash bond or other security acceptable to such operator, to be held in trust by the operator pending written agreement of the parties with respect to payment by the aircraft owner of the amount owing, or pending resolution of charges in a civil action in a court of competent jurisdiction, the trust shall terminate and the airport operator shall receive so much of the bond or other security as is necessary to satisfy any judgment, costs, and interest as may be awarded to the airport operator. The balance shall be refunded immediately to the owner at the owner's last known address by registered mail, return receipt requested. The airport operator shall send to the owner by first class mail a notice that the balance of funds was forwarded to him or her by registered mail, return receipt requested.

(4) If an aircraft parked or hangared at an airport is abandoned, the airport operator may authorize the public sale of the aircraft by authorized personnel to the highest and best bidder for cash as follows:

(a) If an aircraft has been secured by the airport operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within one hundred eighty days after notifying the owner under subsection (1) of this section, or in all other cases, for one hundred eighty days after the operator secures the aircraft, the aircraft shall be conclusively presumed to have been abandoned by the owner;

(b) Before the aircraft is sold, the owner of the aircraft shall be given at least twenty days' notice of sale by registered mail, return receipt requested and the notice of sale shall be published at least once, more than ten but less than twenty days before the sale, in a newspaper of general circulation in the county in which the airport is located. The notice shall include the name of the aircraft, if any, its aircraft identification number, the last known owner and address, the time and place of sale, the amount of airport charges that will be owing at the time of sale, a reasonable description of the aircraft to be sold and that the airport operator may bid all or part of its airport charges at the sale and may become a purchaser at the sale;

(c) The proceeds of a sale under this section shall first be applied to payment of airport charges owed. The balance, if any, shall be deposited with the department of revenue to be held in trust for the owner or owners and lienholders for a period of one year. If more than one owner appears on the aircraft title, and/or if any liens appear on the title, the department must, if a claim is made, interplead the balance into a court of competent jurisdiction for distribution. The department may release the balance to the legal owner provided that the claim is made within one year of sale and only one legal owner and no lienholders appear on the title. If no valid claim is made within one year of the date of sale, the excess funds from the sale shall be deposited in the aircraft search and rescue, safety, and education account created in RCW 47.68.236. If the sale is for a sum less than the applicable airport charges, the airport operator is entitled to assert a claim against the aircraft owner or owners for the deficiency.

(5) The regulations authorized under this section shall be enforceable only if:

(a) The airport operator has had its tariff and/or regulations, including any and all regulations authorizing the impoundment of an aircraft that is the subject of delinquent airport charges, conspicuously posted at the airport manager's office.

(b) All impounding remedies available to the airport operator are included in any written contract for airport charges between an airport operator and an aircraft owner; and

(6) All rules and regulations authorized under this section are adopted either pursuant to chapter 34.05 RCW, or by resolution of the appropriate legislative authority, as applicable. [1987 c 254 § 2.]

14.08.160 Federal aid. (1) A municipality is authorized to accept, receive, and receipt for federal moneys and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities and sites therefor, and to comply with the provisions of the laws of the United States and any rules and

regulations made thereunder for the expenditure of federal moneys upon airports and other air navigation facilities.

(2) The governing body of any municipality is authorized to designate the state secretary of transportation as its agent to accept, receive, and receipt for federal moneys on its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, and may enter into an agreement with the secretary of transportation prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and applicable laws of this state. Such moneys as are paid over by the United States government shall be paid over to the municipality under such terms and conditions as may be imposed by the United States government in making the grant.

(3) All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the state secretary of transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where the acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal moneys, the municipality or the secretary of transportation, as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary. [1984 c 7 § 6; 1945 c 182 § 9; Rem. Supp. 1945 § 2722-38. Formerly RCW 14.08.160, 14.08.170, and 14.08.180.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.08.190 Establishment of airports on waters and reclaimed land. (1) The powers herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

(2) All the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land. [1945 c 182 § 10; Rem. Supp. 1945 § 2722-39.]

14.08.200 Joint operations. (1) All powers, rights, and authority granted to any municipality in this chapter may be exercised and enjoyed by two or more municipalities, or by this state and one or more municipalities therein, acting jointly, either within or outside the territorial limits of either or any of the municipalities and within or outside this state, or by this state or any municipality therein acting jointly with any other state or municipality therein, either within or outside this state if the laws of the other state permit such joint action.

(2) For the purposes of this section only, unless another intention clearly appears or the context requires otherwise, this state is included in the term "municipality," and all the powers conferred upon municipalities in this chapter, if not otherwise conferred by law, are conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the "governing body" of a municipality, that term means, as to the state, its secretary of transportation.

(3) Any two or more municipalities may enter into agreements with each other, duly authorized by ordinances or resolution, as may be appropriate, for joint action under this section. Concurrent action by the governing bodies of the municipalities involved constitutes joint action.

(4) Each such agreement shall specify its terms; the proportionate interest which each municipality shall have in the property, facilities, and privileges involved, and the proportion of preliminary costs, cost of acquisition, establishment, construction, enlargement, improvement, and equipment, and of expenses of maintenance, operation, and regulation to be borne by each, and make such other provisions as may be necessary to carry out the provisions of this section. It shall provide for amendments thereof and for conditions and methods of termination; for the disposition of all or any part of the property, facilities, and privileges jointly owned if the property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this section or if the agreement is terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

(5) Municipalities acting jointly as authorized in this section shall create a board from the inhabitants of the municipalities for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating, and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. The board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

(6) Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

(7) Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of the municipalities granted by this chapter, except as provided in this section. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by approval of the governing bodies of

each of the municipalities involved. Upon the approval of the governing body, or if no approval is necessary then upon the board's own determination, such property may be acquired by private negotiation under such terms and conditions as seem just and proper to the board. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding December 1st, of a budget for the ensuing calendar year, which budget may be amended or supplemented by joint resolution of the municipalities involved during the calendar year for which the original budget was approved. Rules and regulations provided for by RCW 14.08.120(2) become effective only upon approval of each of the appointing governing bodies. No real property and no airport, other navigation facility, or air protection privilege, owned jointly, may be disposed of by the board by sale except by authority of all the appointing governing bodies, but the board may lease space, land area, or improvements and grant concessions on airports for aeronautical purposes, or other purposes which will not interfere with the aeronautical purposes of such airport, air navigation facility, or air protection privilege by private negotiation under such terms and conditions as seem just and proper to the board, subject to the provisions of RCW 14.08.120(4). Subject to the provisions of the agreement for the joint venture, and when it appears to the board to be in the best interests of the municipalities involved, the board may sell any personal property by private negotiations under such terms and conditions as seem just and proper to the board.

(8) Each municipality, acting jointly with another pursuant to the provisions of this section, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by RCW 14.08.120(2), and to fix by such ordinances penalties for the violation thereof. When so adopted, the ordinances have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or outside the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in the same manner as are its individual ordinances. The consent of the state secretary of transportation to any such ordinance, where the state is a party to the joint venture, is equivalent to the enactment of the ordinance by a municipality. The publication provided for in RCW 14.08.120(2) shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

(9) Condemnation proceedings shall be instituted, in the names of the municipalities jointly, and the property acquired shall be held by the municipalities as tenants in common. The provisions of RCW 14.08.030(2) apply to such proceedings.

(10) For the purpose of providing funds for necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement. Such funds shall be provided for by bond issues, tax levies, and appropriations made by each municipality in the same manner as though it were acting separately under the authority of this chapter. The revenues obtained from the ownership, control, and operation of the airports and other air navigation facilities jointly controlled shall be paid into the fund, to be expended as provided in this chapter. Revenues in excess of cost of maintenance and operating expenses of the joint properties shall be divided or allowed to accumulate for future anticipated expenditures as may be provided in the original agreement, or amendments thereto, for the joint venture. The action of municipalities involved in heretofore permitting such revenues to so accumulate is declared to be legal and valid.

(11) The governing body may by joint directive designate some person having experience in financial or fiscal matters as treasurer of the joint operating agency. Such a treasurer shall possess all the powers, responsibilities, and duties that the county treasurer and auditor possess for a joint operating agency related to creating and maintaining funds, issuing warrants, and investing surplus funds. The governing body may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the governing body finds will protect the joint operating agency. The premium on such bond shall be paid by the joint operating agency. All disbursements from the joint fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe. If no such joint directive is made by the governing appointing bodies to designate a treasurer, then the provisions of RCW 43.09.285 apply to such joint fund.

(12) Specific performance of the provisions of any joint agreement entered into as provided for in this section may be enforced as against any party thereto by the other party or parties thereto. [1987 c 254 § 4; 1984 c 7 § 7; 1967 c 182 § 1; 1949 c 120 § 1; 1945 c 182 § 11; Rem. Supp. 1949 § 2722-40. Formerly RCW 14.08.200 through 14.08.280.]

Severability—1984 c 7: See note following RCW 47.01.141.

Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.

14.08.290 County airport districts authorized. The establishment of county airport districts is hereby authorized. Written application for the formation of such a district signed by at least one hundred registered voters, who reside and own real estate in the proposed districts, shall be filed with the board of county commissioners. The board shall immediately transmit the application to the proper registrar of voters for the proposed district who shall check the names, residence and registration of the signers with the records of his office and shall, as soon as possible, certify to said board the number of qualified signers. If the requisite number of signers is so certified, the board shall thereupon place the proposition: "Shall a county airport district be established in the following area: (describing the proposed district)?," upon the ballot for vote of the people of the proposed district at the next election, general or special. If a majority of the voters on such proposition shall vote in favor of the proposition, the board, shall, by resolution, declare the district established. If the requisite number of qualified persons have not signed the application, further signatures may be added and certified until the requisite

number have signed and the above procedure shall be thereafter followed.

The area of such district may be the area of the county including incorporated cities and towns, or such portion or portions thereof as the board may determine to be the most feasible for establishing an airport. When established, an airport district shall be a municipality as defined in this chapter and entitled to all the powers conferred by this chapter and exercised by municipal corporations in this state. The airport district is hereby empowered to levy not more than seventy-five cents per thousand dollars of assessed value of the property lying within the said airport district: PROVIDED, HOWEVER, Such levy shall not be made unless first approved at any election called for the purpose of voting on such levy. [1973 1st ex.s. c 195 § 1; 1949 c 194 § 1; 1945 c 182 § 12; Rem. Supp. 1949 § 2722-41.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

14.08.300 Governing body of district. The governing body of a county airport district shall be the board of county commissioners except as in this chapter provided. [1951 c 114 § 1; 1945 c 182 § 13; Rem. Supp. 1945 § 2722-42.]

14.08.302 Board of airport district commissioners—Petition—Order establishing. One hundred or more registered voters in any county airport district may make, sign and file a petition with the board of county commissioners asking that thereafter the airport district be governed by a board of airport district commissioners. Within ten days after receipt of such petition, the board of county commissioners shall check the petition. If the petition be found adequate and to be signed by the prescribed number of legal voters, the board of county commissioners shall within a reasonable time call a public hearing, notice of which shall be given by publication one week in advance thereof in a newspaper circulating within the district, at which arguments shall be heard for or against the proposal and if it shall appear to the county commissioners that the residents of the district so desire they shall enter an order declaring that the county airport district shall be governed by a board of three airport district commissioners. [1951 c 114 § 2.]

14.08.304 Board of airport district commissioners—Members—Election—Terms—Expenses. The board of airport district commissioners shall consist of three members, who shall each be a registered voter and actually a resident of the district. The first commissioners shall be appointed by the county legislative authority. At the next general district election, held as provided in RCW 29.13.020, three airport district commissioners shall be elected. The term of office of airport district commissioners shall be two years, or until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170. Members of the board of airport district commissioners shall be elected at each regular general election on a nonpartisan basis. They shall be nominated by petition of ten registered voters of the district. Vacancies on the board of airport district commissioners shall be filled by appointment by the remaining commissioners. Members of the board of airport district commissioners shall receive no compensation for their services, but shall be reimbursed for actual necessary traveling and sustenance expenses incurred while engaged on official business. [1979 ex.s. c 126 § 3; 1951 c 114 § 3.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Nonpartisan primaries and elections: Chapter 29.21 RCW.

14.08.310 Assistance to other municipalities. Whenever the governing body of any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality in exercising the powers and authority granted by this chapter, such first-mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of moneys, which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purposes if the municipality were exercising the powers heretofore granted in its own behalf. [1945 c 182 § 14; Rem. Supp. 1945 § 2722-43.]

14.08.330 Jurisdiction of municipality over airport and facilities exclusive—Concurrent jurisdiction over adjacent territory—Fire code enforcement by agreement. Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of this chapter, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it. The municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations. However, by agreement with the municipality operating and controlling the airport or air navigation facility, a municipality in which an airport or air navigation facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its jurisdictional boundaries. [1985 c 246 § 1; 1945 c 182 § 15; Rem. Supp. 1945 § 2722-44.]

14.08.340 Interpretation and construction. This act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics. [1945 c 182 § 17; Rem. Supp. 1945 § 2722-46.]

14.08.350 Severability—1945 c 182. If any provision of this act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application,

and to this end the provisions of this act are declared to be severable. [1945 c 182 § 16.]

14.08.360 Short title. This act may be cited as the "Revised Airports Act." [1945 c 182 § 18.]

14.08.370 Repeal. All acts and parts of acts in conflict with this act are hereby repealed. [1945 c 182 § 19.]

Chapter 14.12
AIRPORT ZONING

Sections

Municipal airports, subject to county's comprehensive plan and zoning ordinances: RCW 35.22.415.

Planning commissions: Chapter 35.63 RCW.

14.12.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Airports" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

(2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(4) "Political subdivision" means any county, city, town, port district or other municipal or quasi municipal corporation authorized by law to acquire, own or operate an airport.

(5) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, including the state and its political subdivisions, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth. [1945 c 174 § 1; Rem. Supp. 1945 § 2722-15.]

14.12.020 Airport hazards contrary to public interest. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (2) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (3) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein. [1945 c 174 § 2; Rem. Supp. 1945 § 2722-16.]

14.12.030 Power to adopt airport zoning regulations. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed. [1945 c 174 § 3; Rem. Supp. 1945 § 2722-17. Formerly RCW 14.12.030 and 14.12.040.]

14.12.050 Relation to comprehensive zoning regulations. (1) Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees,

the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail. [1945 c 174 § 4; Rem. Supp. 1945 § 2722-18. Formerly RCW 14.12.050 and 14.12.060.]

14.12.070 Procedure for adoption of zoning regulations. (1) Notice and hearing. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in RCW 14.12.030(2), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

(2) Airport zoning commission. Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission. [1945 c 174 § 5; Rem. Supp. 1945 § 2722-19. Formerly RCW 14.12.070 and 14.12.080.]

Public meetings: Chapter 42.30 RCW.

14.12.090 Airport zoning requirements. (1) Reasonableness. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Nonconforming uses. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in RCW 14.12.110(3). [1945 c 174 § 6; Rem. Supp. 1945 § 2722-20. Formerly RCW 14.12.090 and 14.12.100.]

14.12.110 Permits and variances. (1) Permits. Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter: PROVIDED, That any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. [1945 c 174 § 7; Rem. Supp. 1945 § 2722-21. Formerly RCW 14.12.110, 14.12.120, and 14.12.130.]

14.12.140 Board of adjustment. (1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in RCW 14.12.190.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under RCW 14.12.110(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record. [1945 c 174 § 10; Rem. Supp. 1945 § 2722-24. Formerly RCW 14.12.140, 14.12.150, 14.12.160, and 14.12.170.]

14.12.180 Administration of airport zoning regulations. All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under RCW 14.12.110(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. [1945 c 174 § 9; Rem. Supp. 1945 § 2722-23.]

14.12.190 Appeals. (1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision or [of] such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the board or notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken. [1945 c 174 § 8; Rem. Supp. 1945 § 2722-22.]

14.12.200 Judicial review. (1) Any person aggrieved, or taxpayer affected, by any decision of the board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the superior court of the county in which the airport is located a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

(2) Upon presentation of such petition the court may allow a writ of review directed to the board of adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a supersedeas.

(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

(6) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land. [1945 c 174 § 11; Rem. Supp. 1945 § 2722-25.]

14.12.210 Enforcement and remedies. Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall constitute a misdemeanor, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto. [1945 c 174 § 12; Rem. Supp. 1945 § 2722-26.]

14.12.220 Acquisition of air rights. In any case in which: (1) It is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, avigation casement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter. [1945 c 174 § 13; Rem. Supp. 1945 § 2722-27.]

14.12.900 Severability—1945 c 174. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1945 c 174 § 14.]

14.12.910 Short title. This act shall be known and may be cited as the "Airport Zoning Act." [1945 c 174 § 15.]

Chapter 14.16
AIRCRAFT AND AIRMAN REGULATIONS

Sections

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

14.16.010 Definitions. In this chapter "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "airman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way and any individual who is in charge of the inspection, overhauling, or repairing of aircraft. "Operating aircraft" means performing the services of aircraft pilot. "Person" means any individual, proprietorship, partnership, corporation, or trust. "Downed aircraft rescue transmitter" means a transmitter of a type approved by the state department of transportation or the federal aviation administration with sufficient transmission power and reliability that it will be automatically activated upon the crash of an aircraft so as to transmit a signal on a preset frequency so that it will be effective to assist in the location of the downed aircraft. "Air school" means air school as defined in RCW 47.68.020(11). [1984 c 7 § 8; 1969 ex.s. c 205 § 1; 1929 c 157 § 1; RRS § 2722-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.16.020 Federal licensing of aircraft required. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate any aircraft within this state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force: PROVIDED, HOWEVER, That for the first thirty days after entrance into this state this section shall not apply to aircraft owned by a nonresident of this state other than aircraft carrying persons or property for hire, if such aircraft is licensed and registered and displays identification marks in compliance with the laws of the state, territory or foreign country of which its owner is a resident. [1929 c 157 § 2; RRS § 2722-2.]

Aircraft certificates required: RCW 47.68.230.

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.030 Federal licensing of airmen. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person serving as an airman within this state should have the qualifications necessary for obtaining and holding the class of license required by the United States government with respect to such an airman subject to its jurisdiction, it shall be unlawful for any person to serve as an airman within this state unless he have such a license: PROVIDED, HOWEVER, That for the first thirty days after entrance into this state this section shall not apply to nonresidents of this state operating aircraft within this state, other than aircraft carrying persons or property for hire, if such person shall have fully complied with the laws of the state, territory or foreign country of his residence respecting the licensing of airmen. [1929 c 157 § 3; RRS § 2722-3.]

Airman certificates required: RCW 47.68.230.

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.040 Possession of license. The certificate of the license herein required shall be kept in the personal possession of the licensee when he is serving as an airman within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he shall land. [1929 c 157 § 4; RRS § 2722-4.]

14.16.050 Traffic rules. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that any person operating aircraft within this state should conform to the air traffic rules now or hereafter established by the secretary of commerce of the United States for the navigation of aircraft subject to the jurisdiction of the United States, it shall be unlawful for any person to navigate any aircraft within this state otherwise than in conformity with said air traffic rules. [1929 c 157 § 5; RRS § 2722-5.]

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.060 Penalty. Any person who violates any provision of this chapter shall be guilty of an offense punishable by a fine of not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment. [1929 c 157 § 6; RRS § 2722-6.]

14.16.080 Downed aircraft rescue transmitter required—Exceptions. Any aircraft used to carry persons or property for compensation, or any aircraft that is rented or leased without a pilot, shall be equipped with a fully functional downed aircraft rescue transmitter and it shall be unlawful for any person to operate such aircraft without such a transmitter: PROVIDED, HOWEVER, Nothing in this section shall apply to (1) instructional flights by an air school, with the exception of solo flights by students; (2) aircraft owned by and used exclusively in the service of the United States government; (3) aircraft registered under the laws of a foreign country; (4) aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft; and (5) aircraft used by any air carrier or supplemental air carrier operating in accordance with the provisions of a certificate of public conveyance and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended. [1987 c 273 § 1; 1969 ex.s. c 205 § 2.]

14.16.090 Certain aircraft to carry survival kit—Contents—Misdemeanor to operate without—Exceptions. (1) Any aircraft used to carry persons or property for compensation, or any aircraft that is rented or leased without a pilot shall be equipped with a survival kit consisting of those items prescribed by the department of transportation, which shall include, at least the following: (a) A tube tent or similar sheltering device; (b) a horn, whistle, or similar audible device capable of emitting a signal one-quarter of a mile; (c) a mirror; (d) matches; (e) a candle and/or another fire-starting device; and (f) survival instruction.

(2) It shall be unlawful for any person to operate such aircraft without such a survival kit: PROVIDED, HOWEVER, That nothing in this section shall apply to: (a) Instructional flights by an air school, with the exception of solo flights by students; (b) aircraft owned by and exclusively in the service of the United States government; (c) aircraft registered under the laws of a foreign country; (d) aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft; and (e) aircraft used by any air carrier or supplemental air carrier operating in accordance with the provisions of a certificate of public conveyance and necessity under the provisions of the federal aviation act of 1958, Public Law 85-726, as amended. [1987 c 273 § 2.]

14.16.900 Severability—1929 c 157. If any provision of this act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the application of such provision to other persons and circumstances shall not be affected thereby. [1929 c 157 § 7.]

Chapter 14.20
AIRCRAFT DEALERS

Sections

Aircraft excise tax: Chapter 82.48 RCW.

14.20.010 Definitions. When used in this chapter and RCW 47.68.250 and 82.48.100:

(1) "Person" includes a firm, partnership, or corporation;

(2) "Dealer" means a person engaged in the business of selling, exchanging, or acting as a broker of aircraft;

(3) "Aircraft" means any weight-carrying device or structure for navigation of the air, designed to be supported by the air, but which is heavier than air and is mechanically driven;

(4) "Secretary" means the secretary of the state department of transportation. [1984 c 7 § 9; 1955 c 150 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.020 Unlawful to act as aircraft dealer without current license—Application. (1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter.

(2) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary. [1984 c 7 § 10; 1983 c 135 § 1; 1955 c 150 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.030 Application for license—Contents. Applications for an aircraft dealer's license shall contain:

(1) The name under which the dealer's business is conducted and the address of the dealer's established place of business;

(2) The residence address of each owner, director, or principal officer of the aircraft dealer, and, if a foreign corporation, the state of incorporation and names of its resident officers or managers;

(3) The make or makes of aircraft for which franchised, if any;

(4) Whether or not used aircraft are dealt in;

(5) A certificate that the applicant is a dealer having an established place of business at the address shown on the application, which place of business is open during regular business hours to inspection by the secretary or his representatives; and

(6) Whether or not the applicant has ever been denied an aircraft dealer's license or has had one which has been denied, suspended, or revoked. [1984 c 7 § 11; 1955 c 150 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.040 Certificates. During such time as aircraft are held by a dealer for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of the dealer's business, an aircraft dealer's certificate may be used on the aircraft in lieu of a registration certificate or fee and in lieu of payment of excise tax. The secretary shall issue one aircraft dealer's certificate with each aircraft dealer's license. Additional aircraft dealer's certificates shall be issued to an aircraft dealer upon request and the payment of the fee provided in RCW 14.20.050. Nothing contained in this section, however, may be construed to prevent transferability among dealer aircraft of any aircraft dealer's certificate, and the certificate need be displayed on dealer aircraft only while in actual use or flight. Every aircraft dealer's certificate issued expires on December 31st, and may be renewed upon renewal of an aircraft dealer's license. [1984 c 7 § 12; 1955 c 150 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.050 License and certificate fees. The fee for original aircraft dealer's license for each calendar year or fraction thereof is twenty-five dollars which includes one aircraft dealer's certificate and which may be renewed annually for a fee of ten dollars. Additional aircraft dealer certificates may be obtained for two dollars each per year. If any dealer fails or neglects to apply for renewal of his license prior to February 1st in each year, his license shall be declared canceled by the secretary, in which case any such dealer desiring a license shall apply for an original license and pay the fee required for an original license. [1984 c 7 § 13; 1955 c 150 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.060 Payment of fees—Fund—Possession and display of licenses and certificates. The fees set forth in RCW 14.20.050 shall be paid to the secretary. The fee for any calendar year may be paid on and after the first day of December of the preceding year. The secretary shall give appropriate receipts therefor. The fees collected under this chapter shall be credited to the general fund. The secretary may prescribe requirements for the possession and exhibition of aircraft dealer's licenses and aircraft dealer's certificates. [1984 c 7 § 14; 1955 c 150 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.070 Surety bonds. Before issuing an aircraft dealer license, the secretary shall require the applicant to file with the secretary a surety bond in the amount of twenty-five thousand dollars running to the state, and executed by a surety company authorized to do business in the state. The bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his business in conformity with the provisions of this chapter, RCW 47.68.250, and 82.48.100. Any person who has suffered any loss or damage by reason of any act by a dealer which constitutes ground for refusal, suspension, or revocation of license under RCW 14.20.090 has a right of action against the aircraft dealer and the surety upon the bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [1984 c 7 § 15; 1983 c 135 § 2; 1983 c 3 § 17; 1955 c 150 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

Surety insurance: Chapter 48.28 RCW.

14.20.080 Branches and subagencies. Every dealer maintaining a branch or subagency in another city or town in this state shall be required to have a separate aircraft dealer's license for such branch or subagency, in the same manner as though each constituted a separate and distinct dealer. [1955 c 150 § 8.]

14.20.090 Denial, suspension, revocation of license—Grounds. The secretary shall refuse to issue an aircraft dealer's license or shall suspend or revoke an aircraft dealer's license whenever he has reasonable grounds to believe that the dealer has:

(1) Forged or altered any federal certificate, permit, rating, or license relating to ownership and airworthiness of an aircraft;

(2) Sold or disposed of an aircraft which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(3) Wilfully misrepresented any material fact in the application for an aircraft dealer's license, aircraft dealer's certificate, or registration certificate;

(4) Wilfully withheld or caused to be withheld from a purchaser of an aircraft any document referred to in subsection (1) of this section if applicable, or an affidavit to the effect that there are no liens, mortgages, or encumbrances of any type on the aircraft other than noted thereon, if the document or affidavit has been requested by the purchaser;

(5) Suffered or permitted the cancellation of his bond or the exhaustion of the penalty thereof;

(6) Used an aircraft dealer's certificate for any purpose other than those permitted by this chapter or RCW 47.68.250 and 82.48.100;

(7) Been adjudged guilty of a crime that directly relates to the business of an aircraft dealer and the time elapsed since the conviction is less than ten years, or had a judgment entered against the dealer within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purpose of this section, the term "adjudged guilty" means, in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of the sentence is deferred or the penalty is suspended. [1984 c 7 § 16; 1983 c 135 § 3; 1983 c 3 § 18; 1955 c 150 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.100 Appeal from secretary's order. If the secretary issues an order that any person is not entitled to an aircraft dealer's license or that an existing license should be suspended or revoked, he shall forthwith notify the applicant or dealer in writing. The applicant has thirty days from the date of the secretary's order to appeal therefrom to the superior court of Thurston county, which he may do by filing a notice of the appeal with the clerk of the superior court and at the same time filing a copy of the notice with the secretary. [1984 c 7 § 17; 1955 c 150 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 14.30
WESTERN REGIONAL SHORT HAUL AIR TRANSPORTATION COMPACT
(See chapter 81.96 RCW)

Title 15
AGRICULTURE AND MARKETING

Chapters

Agister and trainer liens: Chapter 60.56 RCW.

Agricultural
- *labor*
  - *exempt from unemployment compensation: RCW 50.04.150.*
  - *exemptions for certain workers from minimum wage act: RCW 49.46.010.*
- *processing and marketing associations: Chapter 24.34 RCW.*
- *products, commission merchants, dealers, brokers, etc.: Chapter 20.01 RCW.*

Animals
- *belonging to another, killing, maiming, or disfiguring: RCW 9A.48.070 through 9A.48.090.*
- *crimes relating to: Chapter 9.08 RCW.*
- *fur farming: Chapter 16.72 RCW.*
- *generally: Title 16 RCW.*
- *larcenous appropriation of livestock: Chapter 9A.56 RCW, RCW 9A.56.100.*

Bread, weights and measures: RCW 19.92.100 through 19.92.120.

Bread and rolls, standards for manufacturer: Chapter 69.08 RCW.

Bureau of statistics: Chapter 43.07 RCW.

Burning permits within fire protection district: RCW 52.12.101.

Commission merchants: Chapter 20.01 RCW.

Cooperative associations: Chapter 23.86 RCW.

Crimes
- *brands and marks: Chapter 9.16 RCW.*
- *relating to animals: Chapter 9.08 RCW.*
- *relating to fires: Chapter 9A.48 RCW.*

Crops
- *credit associations: Chapter 31.16 RCW.*
- *liens: Chapter 60.11 RCW.*
- *mortgages: Article 62A.9 RCW.*

Dealers in hay or straw, certified vehicle weights required: RCW 20.01.125.

Department of agriculture: Chapters 43.17, 43.23 RCW.

Eggs and egg products: Chapter 69.25 RCW.

Farm labor contractors: Chapter 19.30 RCW.

Farm vehicles, gross weight fees: RCW 46.16.090.

Fishing and hunting, unlawful posting of lands against: RCW 77.16.190.

Flour: Chapter 69.08 RCW.

Food, drug, and cosmetic act: Chapter 69.04 RCW.

Food and beverages, worker's permits: Chapter 69.06 RCW.

Food lockers: Chapter 19.32 RCW.

Fraud in measurement of agricultural products: RCW 9.45.122 through 9.45.126.

Grain
- *elevators, warehouses, etc.: Title 22 RCW.*
- *warehouse insurance: Chapter 22.09 RCW.*

Grain and other commodities, standard grades: Chapter 22.09 RCW.

Grain and terminal warehouses, commodity inspection: Chapter 22.09 RCW.

Granges: Chapter 24.28 RCW.

Grazing ranges: RCW 79.01.244, 79.01.296, chapter 79.28 RCW.

Honey: Chapter 69.28 RCW.

Hops, bale, tare: RCW 19.92.240.

Insect pests and plant diseases: Chapter 17.24 RCW.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.

Liability of agricultural landowners for injuries to recreation users—Limitation: RCW 4.24.210.

Liens
agister and trainer: Chapter 60.56 RCW.
chattel, crop liens: Chapter 60.08 RCW.
crop: Chapter 60.11 RCW.
orchards and orchard lands: Chapter 60.16 RCW.
services of sires: Chapter 60.52 RCW.
sheep dipping: RCW 16.44.090.
warehouseman's: Article 62A.7 RCW.

Mosquito control: Chapter 70.22 RCW.

Motor vehicles
juvenile agricultural driving permits: RCW 46.20.070.
lamps on farm tractors, equipment, etc.: RCW 46.37.160.

New housing for farm workers to comply with state board of health regulations: RCW 70.54.110.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.

Orchards and orchard lands, liens: Chapter 60.16 RCW.

Pest control compact: Chapter 17.34 RCW.

Pesticide application: Chapter 17.21 RCW.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Rodents: Chapter 17.16 RCW.

Services of sires, lien: Chapter 60.52 RCW.

Soil conservation: Chapter 89.08 RCW.

State international trade fairs: RCW 43.31.790 through 43.31.850.

Swine, garbage feeding: Chapter 16.36 RCW.

Vocational agriculture education—Service areas—Programs in local school districts: RCW 28A.300.090.

Washington clean air act: Chapter 70.94 RCW.

Weeds
destruction by cities: RCW 35.21.310.
generally: Title 17 RCW.

Weights and measures
generally: Chapters 19.92, 19.94 RCW.
standards, packages, boxes, etc.: Chapter 19.94 RCW.

Chapter 15.04
GENERAL PROVISIONS

Sections

Bacon, packaging at retail to reveal quality and leanness, director's duties: RCW 69.04.205 through 69.04.207.

Director as member of board of review, business registration and licensing system: RCW 19.02.040.

15.04.010 Definitions. As used in this title except where otherwise defined:

"Department" means the department of agriculture.

"Director" means the director of agriculture.

"Person" includes any individual, firm, corporation, trust, association, cooperative, copartnership, society, any other organization of individuals, and any other business unit, device, or arrangement. [1961 c 11 § 15.04.010. Prior: (i) 1941 c 56 § 3; Rem. Supp. 1941 § 2828-4. (ii) 1941 c 56 § 4; Rem. Supp. 1941 § 2828-5. (iii) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part.]

15.04.020 Director's general duties and powers. The director may:

(1) Furnish to the board of county commissioners of each county annually, on or before September 1st, an estimate of the expenses for the ensuing year of inspecting and disinfecting the horticultural plants, fruits, vegetables and nursery stock and the places in the county where such articles are grown, packed, stored, shipped, held for shipment or delivery, or offered for sale;

(2) Appoint inspectors to enforce and carry out the provisions of this title, who may be of two classes: Inspectors-at-large and local inspectors;

(3) Adopt, promulgate and enforce such rules and regulations as are necessary to or will facilitate his carrying out of the horticultural laws he is authorized and directed to administer and enforce; and

(4) Adopt, promulgate and enforce rules and regulations:

(a) governing the grading, packing, and size and dimensions of commercial containers of fruits, vegetables, and nursery stock;

(b) fixing commercial grades of fruits, vegetables and nursery stock, and providing for the inspection thereof and issuance of certificates of inspection therefor;

(c) for the inspection, grading and certifying of growing crops of agricultural and vegetable seeds and the fixing and collecting of fees for such services;

(d) covering the collection of native plants and parts thereof, and when the manner of collection is destructive of the plants, prohibiting such collecting;

(e) establishing quarantine measures and methods for the protection of agricultural and horticultural crops and products and the control or eradication of pests and diseases injurious thereto. [1981 c 296 § 1; 1977 c 75 § 7; 1961 c 11 § 15.04.020. Prior: (i) 1943 c 150 § 2, part; 1927 c 311 § 2, part; 1921 c 141 § 2, part; 1919 c 195 § 1, part; 1915 c 166 § 2, part; Rem. Supp. 1943 § 2840, part. (ii) 1941 c 20 § 15; 1935 c 168 § 3; Rem. Supp. 1941 § 2849-2f.]

Severability—1981 c 296: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 296 § 40.]

15.04.030 Powers of director, supervisor and inspectors. The director, supervisor and horticultural inspectors may:

(1) Inspect all horticultural premises, fruits, vegetables, nursery stock, horticultural supplies, and other properties which are subject to infection by pests or diseases; require

the owners or persons in charge of any infected property to disinfect the same; disinfect the same in case the owner or person in charge fails, after notice, to do so; condemn and destroy properties which cannot be successfully disinfected; have free access to any such premises or properties at any time;

(2) Require all such products held for shipment which are partially infected, to be sorted and repacked, and if the owner or person in charge after notice fails to do so, they may condemn and destroy them: PROVIDED, That no inspector shall destroy more than ten percent of any variety of nursery stock in any lot or shipment of fifty or more trees, vines, or shrubs without five days' notice to the shipper, during which time the owner or shipper may appeal to the supervisor;

(3) At the request of the owner, inspect his fruit, vegetables, and nursery stock and all other horticultural plants and products and premises where growing or grown, for diseases and pests, and report to him the result of such investigation and prescribe proper remedies;

(4) Issue certificates of inspection to licensed nurserymen and dealers in nursery stock, on stock inspected and approved; and

(5) Inspect or audit, during business hours, the records of any grower of or dealer in nursery stock, to determine the kind of license required by him. [1981 c 296 § 2; 1961 c 11 § 15.04.030. Prior: 1943 c 150 § 2, part; 1927 c 311 § 2, part; 1921 c 141 § 2, part; 1919 c 195 § 1, part; 1915 c 166 § 2, part; Rem. Supp. 1943 § 2840, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.04.040 Inspectors-at-large—Generally. Inspectors-at-large shall pass such an examination by the director as will satisfy him they are qualified in knowledge and experience to carry on the work in the districts to which they are assigned. They shall be assigned to a horticultural inspection district and may be transferred from one district to another. Their salaries and travel expenses, as shown by vouchers verified by them and countersigned by the director, shall be paid by warrants drawn upon the state treasurer, horticultural inspection district funds, the horticultural inspection trust fund, or from county appropriations. [1987 c 393 § 1; 1975-'76 2nd ex.s. c 34 § 11; 1961 c 11 § 15.04.040. Prior: 1957 c 163 § 3; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.04.060 Local inspectors—Petition by owners for assistance in combating infection. Whenever twenty-five or more resident freeholders of any county, each of whom is the owner of an orchard, berry farm, cultivated cranberry marsh or nursery, present a petition to the board of commissioners stating that certain horticultural premises in the county are infected and the petitioners desire the help of inspectors in combating the infection, the board shall by resolution request the director to appoint and assign to that county such a number of local horticultural inspectors for such time as the petition specifies. [1961 c 11 § 15.04.060. Prior: 1957 c 163 § 4; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

15.04.070 Local inspectors—Qualifications—Control of. Said local inspectors shall satisfy the director, by examination, that their knowledge and experience qualifies them to successfully perform horticultural inspection work. All local inspectors are under the direction and control of the director and supervisor. [1981 c 296 § 3; 1961 c 11 § 15.04.070. Prior: 1957 c 163 § 5; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.04.080 Inspections in absence of local inspector. If any county fails to appoint a county horticultural inspector, or he is not available, the nearest available inspector may perform the services, and his compensation and necessary expenses shall be charged against said county.

If any inspector is dismissed from the service, or is assigned to another county or other duties, any qualified inspector or officer of the department may continue or complete any work initiated by him. [1961 c 11 § 15.04.080. Prior: 1957 c 163 § 6; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

15.04.090 Lease of unnecessary lands to nonprofit groups—Funds. The director of agriculture may, at his discretion, for a period of not to exceed ten years, lease state lands which are now or may hereafter be, under his direction and control, the retention of which he deems unnecessary for present state purposes or needs, to any nonprofit group or organization having educational, agricultural or youth development purposes. Such leases shall be upon such terms as the director deems beneficial to the state. All rental funds received by the director under the provisions of this section shall be deposited in the "fair fund" provided in RCW 67.16.100. [1961 c 11 § 15.04.090. Prior: 1953 c 119 § 1.]

15.04.100 Horticulture inspection trust fund. The director shall establish a horticulture inspection trust fund to be derived from horticulture inspection district funds. The director shall adjust district payments so that the balance in the trust fund shall not exceed three hundred thousand dollars. The director is authorized to make payments from the trust fund to:

(1) Pay fees and expenses provided in the inspection agreement between the state department of agriculture and the agricultural marketing service of the United States department of agriculture;

(2) Assist horticulture inspection districts in temporary financial distress as result of less than normal production of horticultural commodities: PROVIDED, That districts receiving such assistance shall make repayment to the trust fund as district funds shall permit;

(3) Pay necessary administrative expenses for the commodity inspection division attributable to the supervision of the horticulture inspection services. [1987 c 393 § 2; 1986 c 203 § 1; 1969 ex.s. c 76 § 1; 1961 c 11 § 15.04.100. Prior: 1959 c 152 § 1; 1957 c 163 § 1.]

Severability—1986 c 203: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 203 § 25.]

15.04.110 Control of predatory birds. The director of the state department of agriculture may control birds which he determines to be injurious to agriculture, and for this purpose enter into written agreements with the federal and state governments, political subdivisions and agencies of such governments, political subdivisions and agencies of this state including counties, municipal corporations and associations and individuals, when such cooperation will implement the control of predatory birds injurious to agriculture. [1961 c 247 § 1.]

15.04.120 Control of predatory birds—Expenditures and contracts. For the purpose of carrying out the provisions of RCW 15.04.110 the director may make expenditures and contract for personal services, control materials and equipment as required to carry out such predatory bird control functions. [1961 c 247 § 2.]

15.04.150 Berry harvesting by youthful workers—Legislative finding. The legislature finds that the crops of berry growers in the state are imperiled by a recent change in the federal law relating to youthful agricultural workers. Since the berry harvest season is so short that few migrant agricultural workers find the trip to this state to pick berries worth the trouble, the long-established use of younger pickers must be permitted to the extent where such employment will not interfere with interstate commerce and the federal law. Further, the legislature finds that such employment is healthful, a good indoctrination for youth in the work ethic and the role of agriculture in society, and an opportunity youths welcome to earn extra spending money. [1975 1st ex.s. c 238 § 1.]

15.04.160 Berry harvesting by youthful workers—Authorized—Restrictions. (1) An employee engaged to pick berries in this state outside of school hours for the school district where such employee is living while so employed may be less than twelve years of age: PROVIDED, That (a) the employee is employed with the consent of his parent or person standing in the place of his parent, (b) the berries are for sale within the state only, and are not to be shipped out of the state in any form; (c) the secretary of agriculture or his designated representative has certified that there are not sufficient workers available in the immediate area to harvest the crop without such youthful employees, and (d) all employees of any employer engaging youthful employees are paid at the same rate for picking berries.

(2) Each basket, package, or other container containing berries or berry products picked by an employee under twelve years of age shall be distinctively marked so as to insure that the berries do not enter interstate commerce: PROVIDED HOWEVER, That nothing in RCW 15.04.150 and 15.04.160 shall apply to employers who are exempt from the federal fair labor standards act. [1975 1st ex.s. c 238 § 2.]

15.04.200 Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements. (1) Under the authority of Article VIII of the state Constitution as amended, agricultural commodity commission expenditures for agricultural development or trade promotion and promotional hosting by an agricultural commodities commission under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.88, and 16.67 RCW shall be pursuant to specific budget items as approved by the agricultural commodity commission at the annual public hearings on the agricultural commodity commission budget.

(2) Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents or commissioners. The rules shall identify officials and agents authorized to make expenditures and the objectives of the expenditures. Individual agricultural commodity commission commissioners shall make promotional hosting expenditures, or seek reimbursements for these expenditures, only in those instances where the expenditures have been approved by the agricultural commodity commission. All payments and reimbursements shall be identified and supported on vouchers.

(3) Agricultural commodity commissions shall be exempt from the requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW. [1987 c 452 § 16; 1986 c 203 § 24; 1985 c 26 § 1.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—1986 c 203: See note following RCW 15.04.100.

Effective date—Contingency—1985 c 26: "This act shall take effect January 1, 1986, if the proposed amendment to Article VIII, of the state Constitution authorizing agricultural commodity assessments for agricultural development or trade promotion and promotional hosting to be deemed a public use for a public purpose is validly submitted to and is approved and ratified by the voters at a general election held in November 1985. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1985 c 26 § 2.] The proposed constitutional amendment was approved by the voters on November 5, 1985. See Article VIII, section 11 of the state Constitution.

15.04.300 Guide to state and federal programs of assistance to farm families. The department of agriculture is authorized to develop, in cooperation with Washington State University and other state agencies, an informational guide to programs offered by state and federal agencies which would be of assistance to farm families. The informational guide shall be made available to farmers and ranchers through county extension offices, farm organizations, and other appropriate means. [1987 c 393 § 26.]

15.04.350 Water supply in Columbia Basin area—Study committee organized. (Effective until June 30, 1994.) (1) The director of the department of agriculture shall organize a committee including but not limited to irrigation and dry land farmers, irrigation district representatives, agricultural economists, electric utility representatives,

fisheries group representatives, and electric ratepayer representatives to conduct a study on water supply availability in the Columbia Basin area. The study shall include the following:

(a) An examination of the potential for expansion of irrigated land in the state;

(b) An evaluation of the alternatives that are available to renew water rights reserved to maintain future options to expand the production of food;

(c) A review of areas in the state in which available water and irrigable land both exist that have a reasonable potential for food production to meet growing demand for food in coming decades;

(d) An analysis of the impact of additional irrigation on the competitive position and profitability of existing agriculture;

(e) A review of the impact of additional irrigation on electricity costs in the Pacific northwest and alternatives for mitigating electrical cost impact;

(f) An analysis of options that facilitate water supply availability for irrigation through conservation and other methods;

(g) A supply and demand analysis of major crops produced in the state including an investigation of alternative crops for those that are in surplus;

(h) A review of available analyses of jobs and economic activity derived from future expansion of other major energy consuming industries and major water uses and their related dependent industries as compared to the jobs and economic activity of future expansion of irrigated agriculture and its related dependent industries. Consistent economic assumptions and methodology shall be used in developing this comparative analysis; and

(i) A review of the bureau of reclamation draft environmental impact statement and other relevant federal reports. The committee organized by the director of agriculture under this section shall not create new data which duplicates the data being developed by the environmental impact statement process.

*(3) Persons appointed to the committee shall be entitled to reimbursement by the department of agriculture under RCW 43.03.050 and 43.03.060 for travel expenses incurred in the performance of their duties. [1986 c 316 § 2.]

Reviser's note: Subsection (2) of this section was vetoed.

15.04.400 Findings—Department's duty to promote agriculture. The history, economy, culture, and the future of Washington state to a large degree all involve agriculture, which is vital to the economic well-being of the state. The legislature finds that farmers and ranchers are responsible stewards of the land, but are increasingly subjected to complaints and unwarranted restrictions that encourage, and even force, the premature removal of lands from agricultural uses.

The legislature further finds that it is now in the overriding public interest that support for agriculture be clearly expressed and that adequate protection be given to agricultural lands, uses, activities, and operations.

The legislature further finds that the department of agriculture has a duty to promote and protect agriculture and its dependent rural community in Washington state. [1991 c 280 § 1.]

15.04.402 Department to advance private sector. The department shall seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber. Additionally, the department shall seek to maintain the economic well-being of the agricultural industry and its dependent rural community in Washington state. [1991 c 280 § 2.]

Chapter 15.08
HORTICULTURAL PESTS AND DISEASES

Sections

Pest control compact: Chapter 17.34 RCW.

15.08.010 Definitions. As used in this chapter:

(1) "Supervisor" means an assistant director known as the supervisor of plant industry.

(2) "Horticultural premises" includes orchards, vineyards, nurseries, berry farms, vegetable farms, cultivated cranberry marshes, packing houses, dryhouses, warehouses, depots, docks, cars, vessels and other places where nursery stock, fruits, vegetables and other horticultural products are grown, stored, packed, shipped, held for shipment or delivery, sold or otherwise disposed of.

(3) "Nursery stock" includes, but is not limited to, any horticultural, floricultural, viticultural, and vegetable plant, for planting, propagation or ornamentation, growing or otherwise, including cut plant material.

(4) "Pests and diseases" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail,

protozoa, or other invertebrate animal, bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organism similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in or to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Nuisance" means any plant, produce or property found in any commercial area upon which is found any pest or disease that is or may be a source of infestation of other properties.

(6) "Commercial area" means a district where any horticultural product is being produced to the extent that a producer is dependent thereon, in whole or in part, for his livelihood.

(7) "Infect," and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined.

(8) "Disinfect," and its derivatives, means the control, cure, or eradication of such pests or diseases by cutting or destroying infected parts or the application of effective pesticides. [1981 c 296 § 4; 1961 c 11 § 15.08.010. Prior: (i) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part. (ii) 1941 c 20 § 2; Rem. Supp. 1941 § 2849-1b. (iii) 1941 c 20 § 3; Rem. Supp. 1941 § 2849-1c. (iv) 1941 c 20 § 4; Rem. Supp. 1941 § 2849-1d. (v) 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.08.020 Methods of prevention, control and disinfection. The following methods shall be used for the prevention, control or disinfection of pests and diseases:

(1) Bacterial diseases, removal and destruction of infected plant or part thereof, care being used to disinfect removal tools to prevent infection therefrom;

(2) Fungus diseases, spraying with effective fungicide;

(3) Chewing or sucking insect pests, spraying with effective insecticide;

(4) Fungus insect pests, spraying with other effective solutions or emulsions described in circulars issued by the director. [1961 c 11 § 15.08.020. Prior: 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

15.08.025 Disinfection of fruit trees—Procedures to be followed. The method for disinfecting fruit trees required to be disinfected under the provisions of this chapter shall be as prescribed in the official published recommendations of the Washington State University for the proper prevention, control and eradication of pests and diseases of fruit trees.

Whenever specific recommendations for disinfecting fruit trees are not set forth in the official published recommendations of the Washington State University, the generally accepted horticultural practices for the prevention, control and eradication of any pests and diseases in the producing area shall be used.

The burden of proving that the proper procedures as set forth in this section have been followed shall be upon the person ordered to disinfect fruit trees.

The disinfection of fruit trees as in this section set forth shall in no way limit the authority of the inspection board to determine that such fruit trees constitute a nuisance and thus shall be subject to removal as provided for in this chapter. [1981 c 296 § 5; 1965 c 27 § 2.]

Severability—1981 c 296: See note following RCW 15.04.020.

Purpose—1965 c 27: "The production of tree fruits in the state of Washington is a major agricultural industry promoting the general economic welfare of the state and beneficial to the health of the public. The proper maintenance of fruit tree orchards to insure the continued and increased benefits to the health and welfare of the state makes it necessary to prevent, eradicate and control any pests or diseases which are or may be injurious to such fruit trees and the produce therefrom. Such prevention, eradication and control of pests and diseases which are or may be injurious to fruit trees and their crops may require chemical or biological control or removal of host trees which may be hosts and breeding places for such diseases and pests. The provisions of this act are adopted under the police power of the state for the purpose of protecting its health and general welfare, presently and in the future." [1965 c 27 § 1.] This applies to RCW 15.08.025.

15.08.030 Duty to disinfect, destroy—Disposal of cuttings. It is the duty of every owner, shipper, consignee, or other person in charge of fruits, vegetables, or nursery stock, and the owner, lessee, or occupant of horticultural premises, to use sufficient methods of prevention to keep said properties free from infection by pests or disease. In event any of said properties become infected it is the duty of said persons to use effective methods to control or destroy the infection by disinfection as in this chapter defined. All fruits, vegetables and nursery stock which cannot be successfully disinfected shall be promptly destroyed.

In counties where black stem rust infection occurs every owner or person in charge of premises on which barberry bushes of the rust-producing varieties are growing shall forthwith destroy such bushes.

Within forty-eight hours after removal of any cuttings or prunings from bacterially infected trees or plants infected with fruit tree leaf roller egg clusters the person removing same shall disinfect or destroy them by burning or scorching. [1961 c 11 § 15.08.030. Prior: (i) 1927 c 311 § 3; 1923 c 37 § 2; 1915 c 166 § 4; RRS § 2842. (ii) 1921 c 141 § 8; 1915 c 166 § 18; RRS § 2856.]

15.08.040 Authority to enter premises—Interference unlawful. The director, supervisor and horticultural inspectors are authorized to at any time enter horticultural premises and any structure where fruit, vegetables, nursery stock, or horticultural products are grown or situated for any purpose, to inspect the same for infection.

No person shall hinder or interfere with any such officer in entering or inspecting or performing any duty imposed upon him. [1961 c 11 § 15.08.040. Prior: 1915 c 166 § 9; RRS § 2847.]

15.08.050 Condemnation of infected property—Disposal of, unlawful. If the premises or property inspected is found to be infected the inspecting officer shall condemn the same and serve upon the owner or person in charge thereof a written notice of the condemnation, describing the premises or property with reasonable certainty, and ordering the infected portion to be disinfected, or to be destroyed if incapable of disinfection, within a time and in a manner stated therein, and giving notice that if the order is not

complied with in the time stated, the officer will disinfect or destroy the property and charge the expense thereof to the owner or against the premises.

No person shall ship, sell, or otherwise dispose of or part with possession of, or transport, any such condemned property until all requirements of said notice and order are complied with and written permit of the inspector so to do is issued. [1961 c 11 § 15.08.050. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.060 Condemnation of infected property—Notice to owner—Division into classes. Said notice of condemnation shall also grant permission to the owner or person in charge of infected fruit, vegetables, or nursery stock to divide the same into classes:

(1) The portion not infected;

(2) the infected portion which is capable of successful disinfection; and

(3) the infected portion which is incapable of successful disinfection and must be destroyed.

Said notice shall require the owner or person to disinfect class (2) and destroy class (3) within the time stated. [1961 c 11 § 15.08.060. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.070 Condemnation of infected property—Use of condemned fruit, vegetables—Permit. In the case of fruit or vegetables which cannot be successfully disinfected the inspector may grant to the owner or person in charge thereof a written permit to use the condemned products for stock feed, or manufacture the same into byproducts, or ship them to a byproduct factory; and it is unlawful for the person receiving such permit to sell or dispose of such products without first having the same manufactured into a byproduct or shipped to a byproduct factory, or to divert any such shipment when made, or for the consignee of such shipment to sell or dispose of the same until it is manufactured into a byproduct. [1961 c 11 § 15.08.070. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.080 Condemnation of infected property—Service of notice—Personal, constructive, substituted. Personal service of said notice shall be made upon the person in possession or in charge of said premises or property if possible. If such person is not the owner, or personal service cannot be made on such person, then a copy of the notice shall be mailed or telegraphed to the owner at his home or post office address if known or can with reasonable diligence be ascertained. If personal service cannot be made upon any person in possession or charge of the premises or property and the name and address of the owner thereof are not known or cannot be so ascertained, then the notice shall be served by posting the same in some conspicuous place on the premises where the property to be disinfected or destroyed is situated, which service by posting shall be construed to be constructive personal service upon such owner. If the name and address of the owner are not known or cannot be so ascertained, service upon the person in possession or charge of the premises or property shall constitute substituted personal service upon the owner, in the absence of fraud or gross neglect. [1961 c 11 § 15.08.080. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.090 Condemnation of infected property—Duty to comply—Inspector's duty on failure—Lien for costs. Except as hereinabove provided, upon service of said notice the owner or person in possession or charge of the premises or property shall comply with its terms within the time specified. In case of their failure so to do, the inspector may enter the premises and perform or cause to be performed the services required in the notice. He shall keep an accurate account of the expense of performing said services, which shall become a lien on the premises or property which may be foreclosed in the manner herein provided. The lien on personal property shall have preference over all other liens.

If the inspector has not disinfected or destroyed the property it may be declared a nuisance as herein provided and treated as such. [1961 c 11 § 15.08.090. Prior: (i) 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part. (ii) 1943 c 150 § 5; 1935 c 168 § 4; 1931 c 27 § 2; 1927 c 311 § 4; 1915 c 166 § 11; Rem. Supp. 1943 § 2849.]

15.08.100 Foreclosure of lien—Sale—Notice of impounding—Contents. The officer disinfecting personal property may enforce the lien thereon provided for in RCW 15.08.090 by impounding and selling the property. He shall give notice of the impounding and proposed sale by posting a written notice in a conspicuous place upon the premises where the property is impounded and serve said notice upon the owner or person in charge of the property in the manner provided for service of notice to disinfect in RCW 15.08.080. Said notice shall state that the property, describing it with reasonable certainty, has been impounded, where it is situated, the amount of costs and expenses charged against it, and that unless same are paid within a specified time the property will be sold to satisfy said charges, accrued transportation and storage charges, if any, and costs of sale. Said specified time shall not be less than ten days after giving of the notice, except that immediate sale may be made of perishable fruits or vegetables. [1961 c 11 § 15.08.100. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.110 Sale proceeds—Deficiency—Action to recover. Such sales may be either at public auction or private sale, whichever, in the sound discretion of the officer, will be to the best interests of the state and owner of the property. The proceeds thereof shall be applied to payment of: First, costs of sale; second, expenses of disinfection; third, accrued transportation and storage charges. The balance, if any, shall be paid to the owner.

Should such proceeds be insufficient to pay the costs of sale and expenses of disinfection, the deficiency may be

recovered from the owner or person in charge in an action brought in the name of the state on the relation of the director by the prosecuting attorney of the county when directed to do so by the attorney general. [1961 c 11 § 15.08.110. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.120 Record of proceedings—Verified copy as evidence. The inspector shall make and sign a record of the proceedings, stating the name of the owner or reputed owner of the property, if known; location of the property, date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; the cost thereof in detail; date and manner of giving notice of impounding and sale; date, place, and manner of sale; name of the purchaser; and amount of the proceeds and disposition thereof.

Upon demand of the owner or person in charge of the property, the inspector shall furnish him with a verified copy of the record, and tender him the balance of the proceeds. If no demand is made within thirty days of the sale, or if the tender is refused, the inspector shall file a verified copy of the record with and remit any balance of the proceeds to the director, and if it is not claimed by the owner within six months, it shall be deposited in the state treasury.

The record or a verified copy thereof shall be admissible in evidence as prima facie evidence of the truth of its contents. [1961 c 11 § 15.08.120. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.130 Record of premises disinfected—Costs—Lien. The inspector disinfecting any horticultural premises shall make and sign a detailed record of the proceedings, stating the legal description of the premises; give the name of the owner or reputed owner; the date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; and the cost thereof in detail. If the cost is not paid within five days from the completion of the disinfecting, the inspector shall file with the auditor of the county in which the premises are situated two verified copies of the above record, and a claim of lien against the premises for the amount of the costs and therein refer to the record, which the auditor shall record as other lien claims. The auditor shall charge the same fees as are charged for filing and recording other liens. [1961 c 11 § 15.08.130. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.140 Hearing on costs—Notice—Service. The county auditor shall forthwith issue warrants in payment of the labor employed in the work, and thereupon the county shall be subrogated to all rights of the laborers so paid. He shall fix the day for hearing on the record before the county commissioners, which shall be not less than twenty days from the date of filing. He shall prepare a notice directed to the owner or reputed owner of the premises of the filing of the record and claim and the hearing thereon, the time and place of the hearing and the amount of the claim. The sheriff shall serve the notice in the manner provided for service of the notice to disinfect, and file with the auditor before the hearing, his return of service and the amount of his fees, which shall be the same as for service of summons in civil proceedings. [1961 c 11 § 15.08.140. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.150 Payment and release—Order on amount—Priority of lien. If before or at the hearing the amount of the claim and the auditor's and sheriff's fees are paid to the county treasurer, he shall deliver to the auditor a duplicate receipt of the payment and the auditor shall cancel the lien and notify the county commissioners thereof. The treasurer shall pay the funds to the persons entitled thereto as appears from the records in the auditor's office.

If payment is not made, the auditor shall present to the board of county commissioners a verified copy of the record and claim, which shall be accepted in any proceeding as prima facie evidence of the truth of the contents thereof. The board shall receive and consider the record and claim and all sworn testimony offered, and shall enter an order fixing the amount of the claim and costs, and direct the amount paid from the current expense fund, and the auditor shall draw warrants therefor. The auditor shall record the order in his office as other lien claims and it shall be a lien against the premises in favor of the county, and shall bear interest at six percent per year from the date of the order. [1961 c 11 § 15.08.150. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.160 Payment date—Cancellation of lien. The lien and interest may be paid on or before the first Monday in October following the entry of the order, upon presenting to the treasurer, a statement from the auditor showing the amount due. Upon payment the treasurer shall stamp the statement and file it in his records, and shall issue a receipt to the person making the payment, showing payment and shall deliver a duplicate to the auditor, who shall then cancel the lien. [1961 c 11 § 15.08.160. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.170 Failure to pay—Conversion into taxes—Use. If the lien and interest are not paid on or before such first Monday in October the commissioners, when levying taxes for the ensuing year, shall also levy on the premises covered by the lien, a tax for the amount of the lien and interest, together with a penalty of six percent, which tax shall be collected as other taxes for current expenses. The auditor shall then cancel the lien and note thereon that the amount thereof has been charged against the premises as taxes.

The tax shall be credited to the current expense fund and used to defray the expense of horticultural inspection and disinfection in the county, whether or not such expenditure has been included in the estimates made in the current county budget. [1961 c 11 § 15.08.170. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.180 Inspection board—Creation—Duties—Powers. If a horticultural inspector finds premises or property infected, he shall make a written report thereof to

the inspector-at-large in his district stating the disease or infestation found, the estimated extent thereof, and whether in his opinion it is or will become a nuisance. Upon receipt of the report the inspector-at-large shall appoint a person residing within three miles of the said premises or property and who is a grower of horticultural products which could be infected from said premises or property, and who, with the inspector-at-large or someone delegated by him from his department, shall appoint a third person likewise a grower of agricultural products which could be so infected. Said three persons shall constitute an inspection board whose duty shall be to forthwith examine the infested premises or property so as to determine whether same or any part thereof is infested with any pest or disease named in RCW 15.08.010.

The board members shall have the same power of entry and inspection as the director, supervisor or horticultural inspector and shall be compensated at the rate of four dollars per day to be paid from the county current expense budget for horticulture. [1961 c 11 § 15.08.180. Prior: (i) 1941 c 20 § 5; 1915 c 166 § 6; Rem. Supp. 1941 § 2849-1e. (ii) 1941 c 20 § 7, part; Rem. Supp. 1941 § 2849-1g, part.]

15.08.190 Report of inspection—Nuisance abatement. Said board shall make a written report to the inspector-at-large of its findings, signed under oath by a majority of its members and stating:

(1) Whether said premises or a part thereof are infested,

(2) If infested, the nature and extent of infestation, and

(3) Whether the infestation constitutes a nuisance. If the report shows the premises infested and constituting a nuisance, it and the findings of the inspector, shall be transmitted forthwith to the prosecuting attorney of the county. Within five days the prosecuting attorney shall file in the superior court a petition, signed and verified by him, describing the premises or property, giving the names of the owners, encumbrancers and other persons interested therein, as ascertained from the county records, containing a recital of the proceedings taken under RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180, and praying for an order declaring the premises or property to be a nuisance. Said report of the inspection board shall be attached to the petition as an exhibit and made a part thereof. [1961 c 11 § 15.08.190. Prior: 1941 c 20 §§ 6, 7, part, 8; Rem. Supp. §§ 2849-1f, 2849-1g, part, 2849-1h.]

15.08.200 Notice of hearing—Service—Adjournments. A notice containing a description of the premises, stating the objects and purposes of the petition and the time and place of presentation of the petition to the court, shall be served upon every person named as interested in the premises at least five days prior to the time of presentation. Service of the notice shall be as nearly as possible in the manner provided by law for service of summons in a civil action, except that if service is had by publication the period of publication shall be two weekly publications in a newspaper published or of general circulation in the county, and the service shall be deemed completed on the expiration of fifteen days after the date of the first publication.

Proof of service may be made by affidavit of the person serving or publishing the notice and shall be filed with the clerk of the court on or before the time of presentation of the petition.

On application of any party or its own motion the court may adjourn the hearing from time to time, and may order new or further notice to be given any person whose interest may be affected. [1961 c 11 § 15.08.200. Prior: (i) 1941 c 20 § 9; 1937 c 71 § 2; Rem. Supp. § 2849-2. (ii) 1937 c 71 § 3; RRS § 2849-3.]

15.08.210 Order of abatement. At the hearing there must be competent proof that all parties interested in the premises or property have been duly served with said notice, and that the procedure prescribed in RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180 has been duly followed. The report of the inspection board shall be prima facie evidence that the premises are infested and constitute a nuisance. If there is no showing that said board acted in a capricious, arbitrary or unfair manner, the court shall accept the recommendation of said board and forthwith decree the plants, produce or property on the premises to constitute a nuisance and order the inspector-at-large of the district and the county commissioners to destroy the same, or abate the nuisance in such other manner as the court may direct.

The costs of destruction or abatement, and of the proceedings shall be taxed against the defendants therein. [1961 c 11 § 15.08.210. Prior: (i) 1941 c 20 § 10; Rem. Supp. 1941 § 2849-2a. (ii) 1937 c 71 § 4; RRS § 2849-4.]

15.08.220 Appeals—Bond for damages. An appeal may be taken from the decree by filing notice thereof not later than ten days after issuance of the decree. The appellant shall be required to file an appeal bond of not less than one thousand dollars and sufficient in amount to cover possible damages to neighboring properties due to delay in carrying out the decree. [1961 c 11 § 15.08.220. Prior: 1941 c 20 §§ 11, 12; Rem. Supp. 1941 §§ 2849-2b, 2849-2c.]

15.08.230 Disinfection of public properties. The director may require the governing body of counties, cities, towns and irrigation and school districts or other political subdivisions of the state to disinfect or destroy all infected trees, shrubs, or other nursery stock growing upon public property within their respective jurisdictions, or the director may disinfect or destroy such infected trees, shrubs, or other nursery stock. [1981 c 296 § 6; 1961 c 11 § 15.08.230. Prior: 1915 c 166 § 19; RRS § 2857.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.08.240 Dumping infected products, containers, prohibited. It shall be unlawful for a property owner or lessee to permit the piling or dumping, or for a person to pile or dump, any infected product on any property or to pile or dump infected containers where the dumping of the infected products or containers might constitute a source of infestation to horticultural products. [1961 c 11 § 15.08.240. Prior: 1943 c 150 § 6; 1941 c 20 § 14; Rem. Supp. 1943 § 2849-2e.]

15.08.250 Host-free districts—Director's duties. Whenever the director determines that a particular pest cannot be eradicated or effectively controlled by ordinary means, or that it is impractical to eradicate or control it without the destruction in whole or in part of uninfected host plants, he may issue a proclamation setting out the host-free period or host-free district, or both, describing the host plant and the district wherein planting, growing, cultivating, or maintenance in any manner of any plants or products capable of continuing the particular pests is prohibited during a specified period of time and until the menace therefrom no longer exists. [1961 c 11 § 15.08.250. Prior: 1941 c 20 § 13; Rem. Supp. 1941 § 2849-2d.]

15.08.260 Horticultural tax. At the time of making the regular annual tax levy the board of county commissioners of each county shall include a tax, to be known as the "horticultural tax," upon the taxable property of the county in an amount sufficient to meet the expense of inspecting and disinfecting nursery stock, fruits, vegetables, horticultural or agricultural products, and horticultural premises under the provisions of this title. Said tax shall be levied and collected in the same manner as are general taxes and when collected shall be placed in the county current expense fund. [1961 c 11 § 15.08.260. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

15.08.270 Basis for estimating the tax. In estimating the amount to be levied for said horticultural tax the board shall take into consideration the expense of such inspection and disinfection for the ensuing year, and the amount which will be collected under the provisions of this chapter on properties disinfected. [1961 c 11 § 15.08.270. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

Chapter 15.09
HORTICULTURAL PEST AND DISEASE BOARD

Sections

15.09.010 Purpose. The purpose of this chapter is to enable counties to more effectively control and prevent the spread of horticultural pests and diseases. [1969 c 113 § 1.]

15.09.020 Creation of board. Either upon receiving a petition filed by twenty-five landowners within the county or on its own motion, the board of county commissioners in order to achieve the purposes of this chapter may, following a hearing, create a horticultural pest and disease board. [1969 c 113 § 2.]

15.09.030 Members—Appointment—Terms. Each horticultural pest and disease board shall be comprised of five voting members, four of whom shall be appointed by the board of county commissioners and one of whom shall be appointed by the director. In addition, the chief county extension agent, or a county extension agent appointed by the chief agent, shall be a nonvoting member of the board.

Of the four members appointed by the board of county commissioners, one of such members shall have at least a practical knowledge of horticultural pests and diseases, and the other members shall be residents of the county, shall own land within the county and shall be engaged in the primary and commercial production of a horticultural product or products. Such appointed members shall serve a term of two years and shall serve without salary. [1988 c 254 § 7; 1969 c 113 § 3.]

15.09.040 Meeting—Quorum—Officers. Within thirty days after the appointed seats on the horticultural pest and disease board have been filled, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairman and such other officers as may be necessary. [1969 c 113 § 4.]

15.09.050 Powers and duties. Each horticultural pest and disease board shall have the following powers and duties:

(1) To receive complaints concerning the infection of horticultural pests and diseases on any parcel of land within the county;

(2) To inspect or cause to be inspected any parcel of land within the county for the purpose of ascertaining the presence of horticultural pests and diseases as provided by RCW 15.09.070;

(3) To order any landowner to control and prevent the spread of horticultural pests and diseases from his property, as provided by RCW 15.09.080;

(4) To control and prevent the spread of horticultural pests and diseases on any property within the county as provided by RCW 15.09.080, and to charge the owner for the expense of such work in accordance with RCW 15.09.080 and 15.09.090;

(5) To employ such persons and purchase such goods and machinery as the board of county commissioners may provide;

(6) To adopt, following a hearing, such rules and regulations as may be necessary for the administration of this chapter. [1969 c 113 § 5.]

15.09.060 Owner's duty to control pests and diseases. Each owner of land containing any plant or plants shall perform or cause to be performed such acts as may be necessary to control and to prevent the spread of horticultural pests and diseases, as such pests and diseases are defined

under RCW 15.08.010, as now or hereafter amended, or as such pests and diseases are defined by the director of the department of agriculture in accordance with the purpose of this chapter and with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The word "owner" as used in this section shall mean the possessor or possessors of any form of legal or equitable title to land and entitlement to possession. For purposes of liability under this chapter, the owners of land shall be jointly and severally liable. [1969 c 113 § 6.]

15.09.070 Right of entry—Search warrant. Any authorized agent or employee of the county horticultural pest and disease board may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens, general inspection, and the performance of such acts as are necessary for controlling and preventing the spreading of horticultural pests and diseases. Such entry may be without the consent of the owner, and no action for trespass or damages shall lie so long as such entry and any activities connected therewith are undertaken and prosecuted with reasonable care.

Should any such employee or authorized agent of the county horticultural pest and disease board be denied access to such property where such access was sought to carry out the purpose and provisions of this chapter, the said board may apply to any court of competent jurisdiction for a search warrant authorizing access to such property for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1969 c 113 § 7.]

15.09.080 Failure to control horticultural pests and diseases—Remedies. (1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the spread of horticultural pests and diseases on his land, as is his duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person. Any action that the board determines requires the destruction of infested plants, absent the consent of the owner, shall be subject to the provisions of subsection (3) of this section.

(3) In the event the owner of land fails to control and prevent the spread of horticultural pests and diseases as required by RCW 15.09.060, and the county horticultural pest and disease board determines that actions it has taken to control and prevent the spread of such pests or diseases has not been effective or the county horticultural pest and disease board determines that no reasonable measures other than removal of the plants will control and prevent the spread of such pests or diseases, the county horticultural pest and disease board may petition the superior court of the county in which the property is situated for an order directing the owner to show cause why the plants should not be removed at the owner's expense and for an order authorizing removal of said infected plants. The petition shall state: (a) The legal description of the property on which the plants are located; (b) the name and place of residence, if known, of the owners of said property; (c) that the county horticultural pest and disease board has, through its officers or agents, inspected said property and that the plants thereon, or some of them, are infested with a horticultural pest or disease as defined by RCW 15.08.010; (d) the dates of all notices and orders delivered to the owners pursuant to this section; (e) that the owner has failed to control and prevent the spread of said horticultural pest or disease; and (f) that the county horticultural pest and disease board has determined that the measures taken by it have not controlled or prevented the spread of the pest or disease or that no reasonable measure can be taken that will control and prevent the spread of such pest or disease except removal of the plants. The petition shall request an order directing the owner to appear and show cause why the plants on said property shall not be removed at the expense of the owner, to be collected as provided in this chapter. The order to show cause shall direct the owner to appear on a date certain and show cause, if any, why the plants on the property described in the petition should not be removed at the owner's expense. The order to show cause and petition shall be served on the owner not less than five days before the hearing date specified in the order in the same manner as a summons and complaint. In the event the owner fails to appear or fails to show by competent evidence that the horticultural pest or disease has been controlled, then the court shall authorize the county horticultural pest and disease board to remove the plants at the owner's expense, to be collected as provided by this chapter. If the procedure provided herein is followed, no action for damages for removal of the plants shall lie against the county horticultural pest and disease board, its officers or agents, or the county in which it is situated. [1991 c 257 § 1; 1982 c 153 § 4; 1969 c 113 § 8.]

Severability—Effective date—1982 c 153: See notes following RCW 17.24.210.

15.09.090 Hearing on liability of owner for costs or charges—Review. Any person upon request and pursuant to the rules and regulations of the horticultural pest and disease board shall be entitled to a hearing before the board on any charge or cost for which such person is alleged to be liable under subsection (2) of RCW 15.09.080. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court of the county where the property is situated and to any damages suffered on account of disinfection work wrongfully undertaken, but no stay or injunction shall lie to delay any such disinfection work subsequent to notice given pursuant to RCW 15.09.080. [1969 c 113 § 9.]

15.09.100 Payment of expenses and costs—Penalty—Collection. Any amount charged to the owner of land in accordance with the provisions of RCW 15.09.080 and 15.09.090 shall be paid by such owner within sixty days of the date in which he was billed for such amount. If payment is not made within such sixty day period, the

amount of such charge, together with a ten percent penalty surcharge, shall, for purposes of collection, become a tax lien under RCW 84.60.010, as now or hereafter amended, and shall be promptly collected as such by the county treasurer: PROVIDED, That where good cause is shown the board may extend for an additional two months the time period during which payment shall be made. [1969 c 113 § 10.]

15.09.110 Refund of charges paid. In regard to any charge made pursuant to RCW 15.09.080, if either the horticultural pest and disease board or the superior court on judicial review disallows such charge, then any amount paid on such charge, together with any interest or penalty, shall be promptly refunded by the county from the county's current expense fund or from any other county funds available. In addition, the county shall pay six percent simple annual interest on such amount refunded. [1969 c 113 § 11.]

15.09.120 Disposition of moneys collected. Any moneys collected under this chapter shall be placed in the county current expense fund together with any taxes collected pursuant to the provisions of RCW 15.08.260, as now or hereafter amended. [1969 c 113 § 12.]

15.09.130 Operating moneys. Sufficient operating moneys for the horticultural pest and disease board shall be provided for pursuant to the provisions of RCW 15.08.260 and 15.08.270, as now or hereafter amended. [1969 c 113 § 13.]

15.09.140 Abolishment of board. Upon receipt of a petition signed by twenty-five landowners within the county or on its own motion, the board of county commissioners may abolish the pest and disease board following a hearing and a finding that the purposes of this chapter would not be sufficiently served by the continued existence of such board. [1969 c 113 § 14.]

15.09.900 Chapter cumulative. The effects of the provisions of this chapter on the provisions of chapter 15.08 RCW shall be cumulative. [1969 c 113 § 15.]

Chapter 15.13

HORTICULTURAL PLANTS AND FACILITIES—INSPECTION AND LICENSING

Sections

Prior law: 1961 c 11 §§ 15.12.010 through 15.12.110; 1961 c 221 §§ 1 through 23 (codified as RCW 15.13.010 through 15.13.210, 15.13.900, and 15.13.910).

15.13.250 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or the director's duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, and viticultural plant, for planting, propagation or ornamentation growing or otherwise. The term does not apply to cut plant material or to olericultural plants.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored, handled or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants.

(6) "Plant pests" means, but is not limited to any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants, weeds, or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(7) "Inspection and/or certification" means, but is not limited to, the inspection of any horticultural plants at any time prior to, during, or subsequent to harvest, or sale, by the director, and the issuance by the director of a written

certificate stating the grades, classifications, and if such horticultural plants are free of plant pests and in compliance with all the provisions of this chapter and rules adopted hereunder.

(8) "Nursery dealer" means any person who sells, holds for sale, or offers for sale, or plants, grows, receives, or handles horticultural plants, including turf for sale or for planting, including lawns, for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement. [1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

Severability—1982 c 182: See RCW 19.02.901.

15.13.260 Enforcement—Rules and regulations—Scope. The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing grades and/or classifications for any horticultural plant and standards for such grades and/or classifications.

(2) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from plant pests.

(3) The director shall adopt rules establishing fees for inspection of horticultural plants and methods of collection thereof.

(4) The director shall when adopting rules or regulations under the provisions of this chapter, hold a public hearing and satisfy all the requirements of chapter 34.05 RCW (administrative procedure act) as enacted or hereafter amended, concerning the adoption of rules and regulations. [1990 c 261 § 2; 1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

15.13.270 Licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations—Fee. The provisions of this chapter relating to licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants as defined in RCW 15.13.250 and which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales. The director shall adopt rules establishing a fee for the permit.

All horticultural plants sold under such a permit issued by the director shall be subject to all the other provisions of this chapter except licensing as set forth herein. [1990 c 261 § 3; 1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

15.13.280 Nursery dealer licenses—Application—Fees—Expiration—Posting—Audit. (1) No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license shall apply through the master license system. The application shall be accompanied by a fee established by the director by rule. The director shall establish by rule, in accordance with chapter 34.05 RCW, a schedule of fees for retail nursery dealer licenses and a schedule of fees for wholesale nursery dealer licenses which shall be based upon the amount of a person's retail or wholesale sales of horticultural plants and turf. The schedule for retail licenses shall include, but shall not be limited to, separate fees for at least the following two categories: (a) A fee for a person whose gross business sales of such materials do not exceed two thousand five hundred dollars; and (b) a fee for a person whose gross business sales of such materials exceed two thousand five hundred dollars.

(2) Except as provided in RCW 15.13.270, a person conducting both retail and wholesale sales of horticultural plants at a place of business shall secure for the place of business (a) a retail nursery dealer license if retail sales of the plants and turf exceed such wholesale sales, or (b) a wholesale nursery dealer license if wholesale sales of the plants and turf exceed such retail sales.

(3) The licensing fee that must accompany an application for a new license shall be based upon the estimated gross business sales of horticultural plants and turf for the ensuing licensing year. The fee for renewing a license shall be based upon the licensee's gross sales of such products during the preceding licensing year.

(4) The license shall expire on the master license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license shall be posted in a conspicuous place open to the public in the location for which it was issued.

(5) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [1987 c 35 § 1; 1985 c 36 § 4; 1983 1st ex.s. c 73 § 3; 1982 c 182 § 20; 1971 ex.s. c 33 § 4.]

Severability—1982 c 182: See RCW 19.02.901.

Master license
expiration date: RCW 19.02.090.
system
existing licenses or permits registered under, when: RCW 19.02.810.
generally: RCW 15.13.250(10).
to include additional licenses: RCW 19.02.110.

15.13.285 Nursery dealer licenses—Fee surcharge. The director may, with the advice of the advisory committee created under RCW 15.13.335, establish by rule a surcharge to be added to the fee established for a nursery dealer license under RCW 15.13.280. The surcharge applied to each license annually shall not exceed twenty percent times the amount of the license fee without the surcharge. Such a surcharge shall be paid at the same time that the licensing fee is paid. Revenue collected from the surcharge shall be deposited in the agricultural local fund under RCW 43.23.230 and shall be used solely to support research projects which are of general benefit to the horticultural

nursery industry and are recommended by the advisory committee created under RCW 15.13.335. [1992 c 23 § 1.]

Effective date—1992 c 23: "This act shall take effect on July 1, 1992." [1992 c 23 § 2.]

15.13.290 Nursery dealer licenses—Additional charge for late renewal. If any application for renewal of nursery dealer license is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 21; 1971 ex.s. c 33 § 5.]

Severability—1982 c 182: See RCW 19.02.901.

Master license
delinquency fee—Rate—Disposition: RCW 19.02.085.
expiration date: RCW 19.02.090.
system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.13.300 Nursery dealer licenses—Application—Contents. Application for a license shall be made through the master license system and shall include:

(1) The full name of the person applying for such license and if the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or the names of the officers of the association or corporation shall be given in the application.

(2) The principal business address of the applicant in the state and elsewhere.

(3) The address for the location or locations for which the licenses are being applied.

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

(5) Any other necessary information prescribed by the director. [1982 c 182 § 22; 1971 ex.s. c 33 § 6.]

Severability—1982 c 182: See RCW 19.02.901.

Master license system
existing licenses or permits registered under, when: RCW 19.02.810.
generally: Chapter 19.02 RCW.

15.13.310 Assessment on gross sale price of wholesale market value of fruit trees, ornamental trees, and rootstock—Method for determining—Due date—Gross sale period—Audit. (1) There is hereby levied an annual assessment on the gross sale price of the wholesale market value for all fruit trees, fruit tree related ornamental trees, and fruit tree rootstock produced in Washington, and sold within the state or shipped from the state of Washington by any licensed nursery dealer during any license period, as set forth in this chapter. Fruit tree related ornamental tree nursery stock shall be limited to the genera, Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, and Sorbus. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or grafted and planted for growing-on in the nursery. The director shall by rule subsequent to a hearing determine the rate of an assessment conforming with the costs necessary to carry out the fruit tree certification and nursery improvement programs specified in RCW 15.13.470.

Such wholesale market price may be determined by the wholesale catalogue price of the seller of such fruit trees, fruit tree related ornamental trees, or fruit tree rootstock or of the shipper moving such fruit trees, fruit tree related ornamentals, or fruit tree rootstock out of the state. If the seller or shipper do not have a catalogue, then such wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining such average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) Such assessment shall be due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous license period.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid. [1990 c 261 § 4; 1987 c 35 § 2; 1983 1st ex.s. c 73 § 4; 1971 ex.s. c 33 § 7.]

15.13.320 Advisory committee—Appointment—Terms—Filling vacancies. An advisory committee is hereby established to advise the director in the administration of the fruit tree and fruit tree related ornamental tree certification and nursery improvement program.

(1) The committee shall consist of five fruit tree nursery dealers and the director or the director's designated appointee.

(2) The director shall appoint this committee from names submitted by the Washington state nurserymen's association.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments. [1990 c 261 § 5; 1983 1st ex.s. c 73 § 5; 1971 ex.s. c 33 § 8.]

15.13.335 Advisory committee—Members—Terms. An advisory committee is hereby established to advise the director in the administration of this chapter.

(1) The committee shall consist of not less than four members, representing the interests of licensed nursery dealers and the nursery industry, appointed by the director in consultation with the following persons: The president of (a) the Washington state floricultural association, (b) the Washington state bulb association, and (c) the Washington state nursery and landscape association; and the director or the director's designated appointee.

(2) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successors have been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments. [1990 c 261 § 6; 1983 1st ex.s. c 73 § 6.]

15.13.340 Collection charge on delinquent assessments. (1) There is hereby levied on all delinquent and unpaid assessments a collection charge of twenty percent of the amount due and to be added thereto for each license period such assessment is delinquent.

(2) The director shall not issue a nursery dealer license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [1971 ex.s. c 33 § 10.]

15.13.350 Denial, suspension, revocation of license—Grounds. The director may, after determining that an applicant or licensee has violated any provisions of this chapter, and complying with the notice and hearing requirement and all other provisions of chapter 34.05 RCW concerning adjudicative proceedings, deny, suspend, or revoke any license issued or which may be issued under the provisions of this chapter. [1990 c 261 § 7; 1989 c 175 § 43; 1971 ex.s. c 33 § 11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

15.13.360 Hearings—Subpoenas—Witnesses, fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records in any hearing in the county where the person licensed under this chapter resides affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses except complaining witnesses, shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1971 ex.s. c 33 § 12.]

15.13.370 Request for inspector's services during shipping season—Costs—Certificate of inspection. Any person licensed under the provisions of this chapter may request, upon the payment of actual costs to the department as prescribed by the director, the services of a horticultural inspector at such licensee's place of business or point of shipment during the shipping season. Subsequent to inspection such horticultural inspector shall issue to such licensee a certificate of inspection signed by the inspector covering any horticultural plants which the inspector finds not to be infected with plant pests and in compliance with the provisions of this chapter and rules adopted hereunder. [1990 c 261 § 8; 1971 ex.s. c 33 § 13.]

15.13.380 Inspection and certification fees—Director to prescribe—When due and payable—Arrears. The director shall prescribe, in addition to those costs provided for in RCW 15.13.370, any other necessary fees to be charged the owner or the owner's agent for the inspection and certification of any horticultural plant subject to the provisions of this chapter or rules adopted hereunder, and for the inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants which are, or are not subject to the provisions of this chapter or rules adopted hereunder, produced in or imported into this state. The inspection fees provided for in this chapter shall become due and payable upon billing by the department. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears. In addition to any other penalties, the director may refuse to perform any inspection or certification service for any person in arrears unless the person makes payment in full prior to such inspection or certification service. [1990 c 261 § 9; 1971 ex.s. c 33 § 14.]

15.13.390 Unlawful selling, shipment or transport of plants within state, when. It shall be unlawful for any person to sell, ship or transport any horticultural plant in this state unless it is apparently free from plant pests. No person shall sell, ship or transport any horticultural plant in this state unless it meets the requirements of this chapter or rules adopted hereunder. [1971 ex.s. c 33 § 15.]

15.13.400 Unlawful shipment or delivery of plants into state, when—Certificate and inspection requirements. (1) It shall be unlawful for any person to ship or deliver any horticultural plant into this state unless such horticultural plant is accompanied by an inspection certificate from the state or country of origin stating that such horticultural plant is apparently free of plant pests and in conformance with not less than the minimal requirements of this chapter or rules adopted hereunder. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director in Olympia, Washington, on or before the date such horticultural plants enter into the state of Washington.

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into the state be inspected for conformance with the requirements of this chapter and rules adopted hereunder, prior to release by the person delivering or transporting such horticultural plants into this state even though accompanied by acceptable inspection certificates issued by the state or country of origin. [1971 ex.s. c 33 § 16.]

15.13.410 Shipments into state to be marked or tagged—Contents. Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner, and shall include the following:

(1) The common name; botanical name; and variety or color picture.

(2) When plants, other than floricultural products are on display for retail sale, each unit of sale shall be tagged as prescribed above. On mixed lots or blocks, each plant shall be tagged as prescribed above.

(3) Any other necessary information prescribed, by rule, by the director. The director may, whenever the director finds that any horticultural plant is not properly marked, order it off sale until it is properly marked, or order that it be returned to the consignor for proper marking.

(4) If the plant is a patented plant or is produced under a grower agreement, that fact shall be noted on the label or tag. [1990 c 261 § 10; 1971 ex.s. c 33 § 17.]

15.13.420 Unlawful acts enumerated—Certain persons exempted from penalty for false advertising. It shall be unlawful for any person:

(1) To falsely represent that the person is the agent or representative of any nursery dealer in horticultural plants;

(2) To deceive or defraud another in the sale of horticultural plants by substituting inferior or different grades from those ordered;

(3) To bring into this state any horticultural plants infested with plant pests, or to sell, offer for sale, hold for sale, distribute, ship or deliver any horticultural plants infested with plant pests;

(4) To sell, offer for sale, hold for sale, solicit orders for or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(5) To advertise the price of horticultural plants without denoting the size of the plant material;

(6) To make the following representations directly or indirectly, without limiting the effects of this section:

(a) That any horticultural plant has been propagated by grafting or budding methods, when such is not the fact;

(b) That any horticultural plant is healthy and will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not a fact;

(c) That any horticultural plant blooms the year around, or will bear an extraordinary number of blooms of unusual size or quality, when such is not a fact;

(d) That any horticultural plant is a new variety, when in fact it is a standard variety to which the person who is selling or holding such horticultural plant for sale has given a new name;

(e) That any horticultural plant cannot be purchased through usual outlets, or that limited stocks are available, when such is not the fact;

(f) That any horticultural plant offered for sale will be delivered in time for the next, or any specified, seasonal planting when the seller is aware of factors which make such delivery improbable;

(g) That the appearance of any horticultural plant is normal or usual when the appearance so represented is in fact abnormal or unusual;

(h) That the root system of any horticultural plant is appreciably larger than that which actually exists, whether accomplished by means of packaging, balling or otherwise;

(i) That bulblets are bulbs;

(j) That any horticultural plant is rare or an unusual item, when such is not the fact;

(7) To sell, offer for sale or hold for sale, or plant for another person any horticultural plants on the basis of grade, unless such horticultural plants have been graded and/or classified and meet the standards prescribed by the director for such grades and/or classifications;

(8) To substitute any other horticultural plant for a horticultural plant covered by an inspection certificate;

(9) To sell, offer for sale, or hold for sale, or plant for another person, any horticultural plant which is dead, in a dying condition, seriously broken, frozen, or damaged, or abnormally potbound;

(10) To sell, offer for sale, or hold for sale, or plant for another person as other than collected horticultural plant any such collected horticultural plant within one year after its collection in its natural habitat unless it is conspicuously marked or labeled as a collected horticultural plant.

No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490 by reason of dissemination of any false advertisement, unless the person has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused dissemination of such false advertisement. [1990 c 261 § 11; 1971 ex.s. c 33 § 18.]

15.13.430 Hold order on infected or infested plants—Selling, offering to sell or moving unlawful. When the department has cause to believe that any horticultural plants are infested or infected by any plant pest, chemical or other damage, the director may issue a hold order on such horticulture plants. It shall be unlawful to sell, offer for sale, or move such plants until released in writing by the director. [1971 ex.s. c 33 § 19.]

15.13.440 Order of condemnation, when—Finality. The director shall condemn any or all horticultural plants in a shipment or when any such horticultural plants are held for sale, or offered for sale and they are found to be dead, in a dying condition, seriously broken, diseased, infested with harmful insects, damaged or frozen or abnormally potbound and shall order such horticultural plants to be destroyed or returned at shipper's option. The director's order shall be final fifteen days after the date of issuance, unless within such time the superior court of the county where the condemnation occurred shall issue an order requiring the director to show cause why the order should not be stayed. [1990 c 261 § 12; 1971 ex.s. c 33 § 20.]

15.13.450 Injunction to prevent violations. The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs, notwithstanding the existence of other remedies at law. [1971 ex.s. c 33 § 21.]

15.13.455 Injunction to restrain operation as nursery dealer without valid license—Costs, attorneys' fees, and expenses. (1) The director is hereby authorized to apply to the superior court of Thurston county for a prompt hearing on, and such court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant, a temporary or permanent injunction restraining any person from operating as a nursery dealer without a valid license.

(2) An order restraining any person from operating as a nursery dealer without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is

equitable and the court deems appropriate in the circumstances. [1983 1st ex.s. c 73 § 7.]

15.13.460 Prior rules adopted and continued. The repeal of RCW 15.13.010 through 15.13.210 and 15.13.900 and 15.13.910 by section 30, chapter 33, Laws of 1971 ex. sess. (uncodified) and the enactment of the remaining sections of this chapter shall not be deemed to have repealed any rules adopted under the provisions of RCW 15.13.010 through 15.13.210 and 15.13.900 and 15.13.910 and in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.05 RCW, concerning the adoption of rules, and any amendment or repeal of such rules after July 1, 1971, shall be subject to the provisions of chapter 34.05 RCW concerning the adoption of rules as enacted or hereafter amended. [1971 ex.s. c 33 § 24.]

15.13.470 Disposition of moneys collected under chapter—Expenditure. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter and rules adopted under this chapter. No appropriation is required for the disbursement of moneys from the account by the director. Any residual balance of funds remaining in the nursery inspection fund on July 26, 1987, shall be transferred to that account within the agricultural local fund: PROVIDED, That all fees collected for fruit tree, fruit tree related ornamental tree, and fruit tree rootstock assessments as set forth in this chapter shall be deposited in the northwest nursery fund to be used only for the Washington fruit tree and fruit tree related ornamental tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW. For the purpose of testing and improvement of fruit trees, fruit tree related ornamental trees, fruit tree rootstock, or other plant material used for the propagation of such stock, the director may, with advice from the advisory committee under RCW 15.13.320, expend up to fifty percent of the money collected from assessments during each fiscal year ending June 30. At no time may such contribution allow the balance of the northwest nursery fund to fall below the combined program cost of the two previous fiscal years. The amount of this minimum balance shall be determined by the director on June 30 of each year. [1990 c 261 § 13; 1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.13.480 Cooperation, agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1971 ex.s. c 33 § 26.]

15.13.490 Compliance with chapter—Violation—Penalties. A person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section. [1990 c 261 § 14; 1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

15.13.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 33 § 22.]

15.13.930 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1971. [1971 ex.s. c 33 § 23.]

15.13.940 Severability—1971 ex.s. c 33. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 33 § 28.]

15.13.950 Effective date—1971 ex.s. c 33. This chapter shall take effect on July 1, 1971. [1971 ex.s. c 33 § 29.]

Chapter 15.14
PLANTING STOCK

Sections

15.14.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society and association and every officer, agent or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Plant propagating stock" hereinafter referred to as "planting stock" includes any propagating materials used for the production or processing of horticultural, floricultural, viticultural or olericultural plants for the purpose of being sold, offered for sale or exposed for sale for planting or reproduction purposes: PROVIDED, That it shall not include agricultural and vegetable seeds as defined in RCW 15.49.011.

(6) "Certified plant stock" means the progeny of foundation, registered or certified plant stock if designated foundation and plant propagating materials that are so handled as to maintain satisfactory genetic identity and purity and have met certification standards required by this chapter and have been approved and certified by the director.

(7) "Foundation planting stock" means plant stock propagating materials that are increased from breeder or designated plant stock and are so handled as to most nearly maintain specific genetic identity and purity. Foundation plant stock, established by designation shall be that plant stock so designated by the director.

(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or in certain cases the sponsoring plant breeder or institution, which may include the department and which provides the source of the foundation plant stock.

(9) "Registered planting stock" means the progeny of foundation or registered planting stock or plant propagating material that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the director. This class of planting stock shall be of a quality suitable for the production of certified planting stock. [1989 c 354 § 84; 1983 c 3 § 19; 1961 c 83 § 1.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.14.020 Certifying officer—Rules. The director is hereby designated the legal plant certifying officer for the state and he may adopt the rules necessary to carry out the purpose and provisions of this chapter. All such rules shall be adopted pursuant to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules. [1961 c 83 § 2.]

15.14.030 Rules—Scope. The director may adopt rules concerning but not limited to:

(1) The certification of planting stock as to variety, type, strain or other genetic character.

(2) The freedom of planting stock from infection by plant pests.

(3) Grades and classifications for the various varieties, types or strains of planting stock and standards and sizes for such grades and/or classifications.

(4) The labeling and identification of certified planting stock.

(5) The inspection of planting stock prior to planting, prior to and during harvest and subsequent to harvest. [1961 c 83 § 3.]

15.14.040 Acquisition of property—Washington state crop improvement nurseries. The director may acquire by purchase, gift, devise, lease or rental, real property and any other type property, including any equipment, products or planting stock necessary to carry out the purpose of this chapter. Such real property shall be designated as Washington state crop improvement nurseries and may be located in remote or outlying areas where the breeder or foundation planting stock may be planted to better protect its genetic identity and freedom from plant pests. [1961 c 83 § 4.]

15.14.050 Foundation and breeder planting stock—Research—Availability to producers and commercial growers. The director may, for the purposes of maintaining and/or improving the genetic characteristics and freedom from plant pests of any foundation and breeder planting stock, make such foundation and breeder stock readily available to producers and commercial growers, acquire and plant such foundation and breeder planting stock for research and propagation. [1961 c 83 § 5.]

15.14.060 Surplus stock—Availability to produce certified or registered stock—Sale, conditions. The director shall make available to producers who desire to produce certified or registered planting stock for their own use or to commercial growers of certified or registered planting stock any or all surplus planting stock: PROVIDED, That the director may retain a large enough supply of such foundation and breeder planting stock so as to maintain or improve its genetic characteristics and make future supplies of such foundation and breeder planting stock readily available to producers and commercial growers of certified and registered planting stock. The director may sell such foundation and breeder stock and shall sell it at its actual cost to the department, as determined by the director. A condition of the sale may be that the purchaser may only use such foundation and breeder planting stock for the purpose of producing certified or registered planting stock and that it may be inspected by the director whenever necessary during its growing period or at harvest time or subsequent to harvest for certification if it is found to meet the requirements of this chapter and rules adopted hereunder for certified or registered planting stock. [1961 c 83 § 6.]

15.14.070 Certificates—Samples for checking, reports. The director may, subject to rules adopted under the provisions of this chapter:

(1) Subsequent to inspection of certified or registered planting stock prior to planting and inspection during its

growth and harvest and subsequent to harvest issue certificates stating that such planting stock is certified or registered planting stock.

(2) Take samples in reasonable amounts as necessary of planting stock certified or registered under the provisions of subsection (1) of this section for the purpose of checking and testing to see if such certified and registered planting stock is maintaining its genetic characteristics and freedom from plant pests. Such samples of certified or registered planting stock shall be planted and checked in Washington state crop improvement nurseries. Reports of the results of the test plantings shall be made available to the producers or commercial growers of certified or registered planting stock forthwith. [1961 c 83 § 7.]

15.14.080 Planting stock areas—Establishment—Place—Notice and hearing. The director may, subsequent to obtaining real property in a remote area for the purpose of establishing a Washington state crop improvement nursery, establish a planting stock area for the purpose of maintaining genetic qualities of planting stock and their freedom from plant pests. Such a planting stock area may be established only in areas where no commercial production of the planting stock to be planted in such Washington state crop improvement nursery is planted. No planting stock area shall be established until the director has published in a newspaper of general circulation, his intent to establish such planting stock area in the county or counties where it is to be located, once each week for three successive weeks, and that a public hearing will be held, within ten days subsequent to the last publication of such notice, for the purpose of determining the feasibility of establishing such a planting stock area. Such hearings shall be subject in addition to the foregoing requirements, to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. The director may in addition to the notice by publication use any other media to inform the public of his intent to establish a planting stock area. [1989 c 175 § 44; 1961 c 83 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

15.14.100 Departmental fees. The director shall by rule establish reasonable fees which may be charged by the department for the inspection, testing and certification of planting stock certified, registered, foundation or breeder planting stock. [1961 c 83 § 10.]

15.14.110 Certification as foundation or breeder seed—Requirements for certification of propagators' plant materials. The director may accept for certification as foundation or breeder seed any plant material grown or produced by Washington state university, the United States department of agriculture or propagators whose plant materials are produced in conformance with the requirements of this chapter and rules adopted hereunder. Such propagators' plant materials shall have been under the observation of the director for a period of not less than one year pursuant to periodic inspections by the director before he may certify them as foundation or breeder planting stock. [1961 c 83 § 11.]

15.14.120 Agreements with educational and governmental entities. The director may cooperate with and enter into agreements with Washington state university, experimental stations, governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1961 c 83 § 12.]

15.14.130 Deposit of funds in northwest nursery fund—Use. All the moneys collected by the director under the provisions of this chapter shall be paid into the northwest nursery fund as created in RCW 15.69.020 and shall be used by the director only to carry out the provisions of this chapter. [1961 c 83 § 13.]

15.14.140 Unlawful acts. It shall be unlawful for any person to sell, offer for sale, hold for sale, label, identify, represent or to advertise any planting stock as being certified, registered, foundation or breeder planting stock unless it has been inspected by the director and he has issued a certificate stating that such planting stock has met the requirements of this chapter and rules adopted hereunder and that it is properly identified and labeled. [1961 c 83 § 14.]

15.14.150 Injunctions. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of other remedies at law. [1961 c 83 § 15.]

15.14.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 83 § 16.]

15.14.910 Other laws not affected. The enactment of *this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date *this act becomes effective. [1961 c 83 § 17.]

***Reviser's note:** "this act" refers to 1961 c 83 which became effective at midnight June 7, 1961, see preface 1961 session laws.

15.14.920 Severability—1961 c 83. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 83 § 18.]

Chapter 15.17
STANDARDS OF GRADES AND PACKS

Sections

Bread, weights and measures standards: RCW 19.92.100 through 19.92.120.

Grain and other commodities, standard grades: Chapter 22.09 RCW.

Hops, bale, tare: RCW 19.92.240.

Weights and measures, standards, packages, boxes, etc.: Chapter 19.94 RCW.

15.17.010 Purpose. The purpose of this chapter is to provide uniform grades and standards for horticultural plants and products and to provide for the inspection of such horticultural plants or products in the state of Washington. This chapter is important and vital to the maintenance of a high level of public health and welfare of the citizens of this state by protecting the national and international reputation of horticultural plants and products grown and shipped from this state and protecting the citizens of this state from the importation and sale of ungraded, immature, and inferior horticultural plants and products so as to prevent a condition conducive to substitution, confusion, deception, and fraud, a condition which if permitted to exist would tend to interfere with the orderly and fair marketing of horticultural plants and products essential to the well being of the citizens of this state. It is hereby declared that this chapter is enacted in the exercise of the police power of this state for the purpose of protecting the immediate and future health, safety, and general welfare of the citizens of this state. [1963 c 122 § 1.]

15.17.020 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Horticultural plant or product" includes, but is not limited to, any horticultural, floricultural, viticultural, and olericultural plant, growing or otherwise, and their products whether grown above or below the ground's surface.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants and products are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants or products.

(6) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface, horticultural plants or products which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of horticultural plants or products whose size is not an accurate representation of the variation of the size of such horticultural plants or products in the entire container, even though such horticultural plants or products in the container are virtually uniform in size or comply with the specific horticultural plant or product for which the director in prescribing standards for grading and classifying has prescribed size variations or if such size variations are prescribed by law.

(7) "Deceptive arrangement or display" of any horticultural plants or products, means any bulk lot or load, arrangement or display of such horticultural plants or products which has in the exposed surface, horticultural plants or products which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of such bulk lot or load, arrangement, or display.

(8) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any container, or upon the label or lining of any such container, or upon the wrapper of any horticultural plants or products, or upon any such horticultural plants or products, or any placard used in connection therewith and having reference to such horticultural plants or products. A statement, design, or device is false or misleading when the horticultural plant or product or container to which it refers does not conform to such statement.

(9) "Container" means any container, subcontainer used within a container, or any type of a container used to

prepackage any horticultural plants or products: PROVIDED, That this does not include containers used by a retailer to package such horticultural plants or products sold from a bulk display to a consumer.

(10) "Agent" means broker, commission merchant, auctioneer, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(11) "Inspection and certification" means, but is not limited to, the inspection of any horticultural plant or product at any time prior to, during, or subsequent to harvest, by the director, and the issuance by him of a written permit to move or sell or a written certificate stating the grade, classification, and if such horticultural plants or products are free of plant pests and/or other defects.

(12) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants. [1963 c 122 § 2.]

15.17.030 Enforcement—Director's duties—Rules—Adoption—Changes—Hearings. (1) The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended.

(2) The director shall, whenever he considers the adoption of rules or amendments to existing rules, consult with growers, associations of growers, or other persons affected by such rules or amendments.

(3) The director may, on his own motion or shall, on the written application of twenty-five or more interested persons, call a hearing for the purpose of considering changes to any rules prescribed under the provisions of this chapter. [1963 c 122 § 3.]

Adoption of rules in respect to horticultural plants and products: RCW 15.17.110.

15.17.040 Unlawful to sell, offer for sale, or ship diseased, pest injured or decayed fruits or vegetables—Exception. It shall be unlawful to sell, offer for sale, hold for sale, ship, or transport any fruits or vegetables in bulk or in containers unless ninety percent or more by weight or count, as established by inspection, are free from (1) plant pest injury which has penetrated or damaged the edible portions; (2) worms, mold, slime, or decay. The provisions of this section shall not apply to those fruits or vegetables for which grades and/or classifications and standards for such grades and/or classifications have been especially provided under the provisions of this chapter or by rules adopted hereunder. [1963 c 122 § 4.]

15.17.050 Rules for grades and classifications, sizes of containers, inspections, etc.—Authority of director to promulgate. The director may, unless otherwise provided for by the laws of this state, or in this chapter, establish rules:

(1) Providing standards and sizes for grades and/or classifications especially provided for in this chapter for any horticultural plant or product;

(2) Providing grades and/or classifications for any horticultural plant or product not especially provided for in this chapter. In establishing such standards for grades and/or classifications, the director shall take into account the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury. When adopting grades and/or classifications for any horticultural plant or product not especially provided for in this chapter the director may consider and adopt grades and/or classifications established by the secretary of agriculture of the United States in effect on July 1, 1963, and any subsequent amendment to such grades and/or classifications prescribed by the said secretary;

(3) Fixing the sizes and dimensions of containers to be used for the packing or handling of any horticultural plant or product;

(4) Concerning the inspection of any horticultural plant or product subject to the provisions of this chapter or in cooperation with the United States government or any other state;

(5) Necessary to carry out the purpose and provisions of this chapter. [1963 c 122 § 5.]

15.17.060 Adoption of United States grades and classifications. The director may adopt any United States grade and/or classification for any horticultural plant or product especially provided for in this chapter if such United States grade and/or classification is substantially equivalent to or better than the minimum grade and/or classification especially provided for such horticultural plant or product in this chapter. [1963 c 122 § 6.]

15.17.070 Combination grades. The director may establish combination grades for fruits and vegetables, and standards and sizes for such combination grades. The standards for such combination grades shall, by percentage quantities, include two or more of the grades, except cull grades, especially provided for in this chapter or adopted by rule hereunder. [1963 c 122 § 7.]

15.17.080 Fresh fruits—Culls—Container markings—Designation on bills of lading, invoices, etc. It shall be unlawful for any person to sell fresh fruits for fresh consumption classified as culls under the provisions of this chapter or rules adopted hereunder unless such fruit is packed in one-half bushel or one bushel wooden baskets ring faced, with the fruit in the ring face representative of the size and quality of the fruit in such baskets. Such baskets shall be lidded and the words "cull" including the kind of fruit and variety must appear on the top and side of each basket and on any label thereon in clear and legible letters at least two and one-half inches high. Every bill of lading, invoice, memorandum, and document referring to said fruit shall designate them as culls. [1963 c 122 § 8.]

15.17.090 Private grades or brands—Approval and registration. The director may approve and register a

private grade or brand for any horticultural plant or product: PROVIDED, That such private grade or brand shall not be lower than the second grade and/or classification established under the provisions of this chapter or rules adopted hereunder for such horticultural plant or product. [1963 c 122 § 9.]

15.17.100 Apples—Grades and classifications—Color requirements—Hearings—Violations. The director shall by rule establish grades and/or classifications for apples and standards and sizes for such grades and/or classifications. In establishing such standards for grades and/or classifications, the director shall take into account the factors of maturity, soundness, color, shape, and freedom from mechanical and plant pest injury. When establishing standards of color requirements for red varieties and partial red varieties of apples, the director shall establish color standards for such varieties which are not less than the following:

1. Arkansas Black	Fifteen percent
2. Spitzenburg (Esopus)	Fifteen percent
3. Winesap	Twenty percent
4. King David	Fifteen percent
5. Delicious	Twenty percent
6. Stayman Winesap	Ten percent
7. Vanderpool	Ten percent
8. Black Twig	Ten percent
9. Jonathan	Ten percent
10. McIntosh	Ten percent
11. Rome	Ten percent
12. Red Sport varieties	Twenty percent

Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties.

The director may upon his or her own motion or upon the recommendation of an organization such as the Washington state horticultural association's grade and pack committee hold hearings in each major apple producing area concerning changes in apple grades and/or standards for such apple grades as proposed by the director or as recommended by such organization.

The hearings on such recommendations for changes in grades for apples and/or standards for such grades shall be subject to chapter 34.05 RCW concerning the adoption of rules.

The director in making a final determination on his or her recommendation or those proposed by such organization shall give due consideration to testimony given by producers or producer organizations at such hearing.

It shall be unlawful for any person to sell, offer for sale, hold for sale, ship, or transport any apples unless they comply with the provisions of this chapter and the rules adopted hereunder. [1990 c 19 § 1; 1963 c 122 § 10.]

15.17.110 Apricots, cantaloupes, prunes, peaches, pears, potatoes and tomatoes—Grades and classifications—Standards—Violations—Adoption of horticultural plants and products rules—Hearings—Director's authority not limited. The director shall by rule establish grades and/or classifications for:

(1) Apricots and standards and sizes for such grades and/or classifications;

(2) Cantaloupes and standards and sizes for such grades and/or classifications;

(3) Italian prunes and standards and sizes for such grades and/or classifications;

(4) Peaches and standards and sizes for such grades and/or classifications;

(5) Pears and standards and sizes for such grades and/or classifications;

(6) Potatoes and standards and sizes for such grades and/or classifications;

(7) Tomatoes and standards and sizes for such grades and/or classifications.

In establishing standards for grades and/or classifications of apricots, cantaloupes, Italian prunes, peaches, pears, potatoes, and tomatoes, the director shall consider, when applicable, the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury.

It shall be unlawful for any person to sell, offer for sale, hold for sale, ship, or transport apricots, cantaloupes, Italian prunes, peaches, pears, potatoes, and tomatoes unless they comply with the provisions of this chapter or rules adopted hereunder.

The provisions of this section and of RCW 15.17.100 shall not in any manner be construed to limit the director's authority to adopt grades and/or classifications for any other horticultural plant or product not especially mentioned in such sections or standards and sizes for grades and/or classifications.

The director when adopting rules in respect to horticultural plants or products shall hold a public hearing and shall consult with affected parties, such as growers, associations of growers and handlers and any final rule adopted as a result of a hearing shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and conditions of the industry and shall be for the purpose of promoting the well-being of the members of the horticultural industry as well as for the general welfare of the people of the state. [1963 c 122 § 11.]

Adoption of rules: RCW 15.17.030.

15.17.120 Continuation of grades and classifications adopted pursuant to repealed chapter—Amendment or repeal. The grades and/or classifications and the standards and sizes for such grades and/or classifications relating to horticultural plants and products specifically mentioned in RCW 15.17.100 and 15.17.110 and included in or adopted under the provisions of chapter 15.16 RCW and in effect immediately prior to the repeal of RCW 15.16.010 through 15.16.490 shall be considered to have been adopted by the director as rules under the provisions of this chapter pursuant to the provisions of chapter 34.05 RCW concerning the adoption of rules, as enacted or hereafter amended. Any amendment or repeal of such rules after July 1, 1963 shall be subject to the provisions of chapter 34.05 RCW concerning the adoption of rules as enacted or hereafter amended. [1963 c 122 § 12.]

Continuation of rules adopted pursuant to repealed chapter: RCW 15.17.920.

15.17.130 Exemption of certain bulk shipments, processed, or manufactured byproducts from chapter. The provisions of this chapter shall not apply:

(1) To the movement in bulk of any horticultural plant or product from the premises where grown or produced to a packing shed, warehouse, or processing plant within the area of production prior to inspection and/or grading where such inspection and/or grading is to be performed at such packing shed, warehouse, or processing plant; nor

(2) To any processed, canned, frozen, or dehydrated horticultural plants or products; nor

(3) Shall this chapter prevent the manufacture of any infected horticultural plant or product into byproducts or its shipment to a byproducts plant. [1963 c 122 § 13.]

Exemption of sales less than five hundred pounds: RCW 15.17.280.

15.17.140 Inspection and certification—Application for. Any person financially interested in any horticultural plants or products in this state may apply to the director for inspection and certification as to whether such horticultural plants or products meet the requirements provided for by the laws of this state, the provisions of this chapter or rules adopted hereunder, or the standards for grading and classifying such horticultural plants or products established by the secretary of the United States department of agriculture, or by any other state, or by contractual agreement between buyers and sellers of such horticultural plants or products. [1963 c 122 § 14.]

15.17.150 Inspection and certification—Fees. The director shall prescribe the necessary fees to be charged, (1) to the owner or his agent for the inspection and certification of any horticultural plants or products subject to the provisions of this chapter or rules adopted hereunder, (2) for inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants or products which are, or are not, subject to the provisions of this chapter or rules adopted hereunder, produced in, or imported into, this state. The fees provided for in this section shall become due and payable by the end of the next business day and if such fees are not paid within the prescribed time the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: PROVIDED, That the director in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any horticultural plants or products for such person. [1963 c 122 § 15.]

15.17.160 Third party grading for buyer and seller—Authority of director to provide—Fees. The director may upon application of both buyer and seller provide a state inspector to perform third party grading for the parties and shall charge fees to cover the cost thereof on the same terms and conditions as provided in RCW 15.17.150 for inspection and certification. [1963 c 122 § 16.]

15.17.170 Inspection certificate as evidence. Every inspection certificate issued by the director under the provisions of this chapter shall be received in all the courts of the state as prima facie evidence of the statements therein. [1963 c 122 § 17.]

15.17.180 Containers—Stamping. Any container packed with any horticultural plant or product for which a grade and/or classification has been especially provided in this chapter or adopted by rule hereunder, may be stamped with either or both the state grade and/or classification and the United States grade and/or classification. [1963 c 122 § 18.]

15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants. The director may enter during business hours and inspect any horticultural facility where any horticultural plants or products are produced, stored, packed, delivered for shipment, loaded, shipped, being transported or sold, and may inspect all such horticultural plants or products and the containers thereof and the equipment in any such horticultural facility. The director may take for inspection such representative samples of such horticultural plants or products and such containers as may be necessary to determine whether or not provisions of this chapter or rules adopted hereunder have been violated, and may subject such samples of horticultural plants or products to any method of inspection or testing. Should the director be denied access to any horticultural facilities where such access was sought for the purpose set forth in this section, he may apply to a court of competent jurisdiction for a search warrant authorizing access to such horticultural facilities for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1963 c 122 § 19.]

15.17.200 Noncomplying horticultural plants or products—Enforcement procedure. The director may affix to any such lot or part thereof of horticultural plants or products a tag or notice of warning that such lot of horticultural plants or products is held and stating the reasons therefor. It shall be unlawful for any person other than the director to detach, alter, deface, or destroy any such tag or notice affixed to any such lot, or part thereof, of horticultural plants or products, or to remove or dispose of such lot, or part thereof, in any manner or under conditions other than as prescribed in such tag or notice, except on the written permission of the director or the court.

The director shall forthwith cause a notice of noncompliance to be served upon the person in possession of such lot of horticultural plants or products. The notice of noncompliance shall include a description of the lot, the place where, and the reason for which, it is held, and it shall give notice that such lot of horticultural plants or products is a public nuisance and subject to disposal as provided in this section unless, within a minimum of seventy-two hours or such greater time as prescribed in the notice by the director, it is reconditioned or the deficiency is otherwise corrected so as to bring it into compliance.

If the person so served is not the sole owner of such lot of horticultural plants or products, or does not have the authority as an agent for the owner to bring it into compliance, it shall be the duty of such person to notify the director forthwith in writing giving the names and addresses

of the owner or owners and all other persons known to him or her to claim an interest in such lot of horticultural plants or products. Any person so served shall be liable for any loss sustained by such owner or other person whose name and address he or she has knowingly concealed from the director.

If such lot of horticultural plants or products has not been reconditioned or the deficiency corrected so as to bring it into compliance within the time specified in the notice, the director shall forthwith cause a copy of such notice to be served upon all persons designated in writing by the person in possession of such lot of horticultural plants or products to be the owner or to claim an interest therein. Any notice required by this section may be served personally or by mail addressed to the person to be served at last known address.

The director with the written consent of all such persons so served, is hereby authorized to destroy such lot of horticultural plants or products or otherwise abate the nuisance. If any such person fails or refuses to give such consent, then the director shall proceed in the manner provided for such purposes in this section.

If such lot of horticultural plants or products is perishable or subject to rapid deterioration the director may, through the prosecutor in the county where such horticultural plants or products are held, file a verified petition in the superior court of the said county to destroy such lot of horticultural plants or products or otherwise abate the nuisance. The petition shall state the condition of such lot of horticultural plants or products, that such lot of horticultural plants or products is held, and that notice of noncompliance has been served as provided in this chapter. The court may then order that such lot of horticultural plants or products be forthwith destroyed or the nuisance otherwise abated as set forth in said order.

If such lot of horticultural plants or products is not perishable or subject to rapid deterioration, the director may, through the prosecutor in the county in which it is located, file a petition within five days of the serving of the notice of noncompliance upon the owners or person in possession of such lot of horticultural plants or products in the superior court or district court of the said county for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be abated. The owner or person in possession, on his or her own motion within five days from the expiration of the time specified in the notice of noncompliance, may file a petition in such court for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be released to the petitioner and any warning tags previously affixed removed therefrom.

The court may enter a judgment ordering that such lot of horticultural plants or products be condemned and destroyed in the manner directed by the court or relabeled, or denatured, or otherwise processed, or sold, or released upon such conditions as the court in its discretion may impose to insure that the nuisance will be abated. In the event of sale by the owner or the court, the costs of storage, handling, reconditioning, and disposal shall be deducted from the proceeds of the sale and the balance, if any, paid into the court for the owner. [1987 c 202 § 172; 1963 c 122 § 20.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.17.210 Violations—Selling, offering for sale, or shipping plants or products not meeting grades, classifications, standards and sizes—Containers—Deceptive practices. It shall be unlawful to sell, offer for sale, hold for sale, ship, or transport any horticultural plants or products:

(1) Subject to the requirements of RCW 15.17.040 unless they meet such requirements;

(2) As meeting the grades and/or classifications and standards and sizes for such grades and/or classifications as adopted or amended by the director under RCW 15.17.050 unless they meet such standards and sizes for such grades and/or classifications;

(3) As meeting the standards and sizes for private grades or brands as approved by the director under RCW 15.17.090 unless they meet such standards and sizes;

(4) In containers other than the size and dimensions prescribed by the director, when he has prescribed by rule such size and dimensions for containers in which any horticultural plants or products will be placed or packed: PROVIDED, That this subsection shall not apply when any such horticultural plants or products are being shipped or transported to a packing plant, processing plant, or cold storage facility for preparation for market;

(5) Unless the containers in which such horticultural plants or products are placed or packed are marked as prescribed by the director, with the proper United States and/or Washington grade and/or classification or private grades or brands of such horticultural plants or products;

(6) Unless the containers in which such horticultural plants or products are placed or packed are marked as prescribed by the director, which may include the following:

(a) The name and address of the grower, or packer, or distributor;

(b) The varieties of such horticultural plants or products;

(c) The size, weight, volume and/or count of such horticultural plants or products;

(7) Which are in containers marked or advertised for sale or sold as being graded and/or classified according to the standards and sizes prescribed by the director or by law unless such horticultural plants or products conform with such grades and/or classifications and their standards and sizes;

(8) Which are deceptively packed;

(9) Which are deceptively arranged or displayed;

(10) Which are mislabeled;

(11) Which do not conform to the provisions of this chapter or rules adopted hereunder. [1963 c 122 § 21.]

15.17.220 Violations—Re-marking containers—Inspection certificates—Refusing or avoiding inspections—Moving tagged plants or products. It shall be unlawful:

(1) To re-mark any container to a higher or superior grade than that marked thereon by the grower or packer of any horticultural plants or products, unless such horticultural plants or products meet the requirements of the higher grade;

(2) For any person to ship or transport or any carrier to accept any horticultural plant or product without an inspection certificate or permit when the director has prescribed by

rule that such horticultural plants or products shall be accompanied by an inspection certificate or permit issued by him when shipped or transported. Such inspection certificate or permit shall be on a form prescribed by the director and may include space for stamps or other methods of denoting that all assessments provided for by law have been paid before such horticultural plants or products may lawfully be delivered or accepted for shipment;

(3) For any consignee to accept any shipment of horticultural plants or products which is not accompanied by an inspection certificate or permit prescribed by rule under the provisions of this chapter;

(4) For any reason to refuse to submit any container, load, or display of horticultural plants or products to the inspection of the director, or refuse to stop any vehicle or equipment containing horticultural plants or products for the purpose of inspection by the director;

(5) For any person to move any horticultural plants or products or their containers to which any warning tags or notice from the place where it was affixed, except under a written permit from the director or under his specific direction. [1963 c 122 § 22.]

15.17.230 Horticulture inspection districts. For the purpose of this chapter the state shall be divided into not less than three horticulture inspection districts to which the director may assign one or more inspectors-at-large who as a representative of the director shall supervise and administer regulatory and inspection affairs of the districts: PROVIDED, That for purposes of efficiency and economy the director may by rule promulgated in accordance with the Administrative Procedure Act establish or adjust district boundaries or abolish any district: PROVIDED, HOWEVER, That there shall be at least three districts in existence at all times. [1986 c 203 § 2; 1975 1st ex.s. c 7 § 1; 1969 ex.s. c 76 § 2; 1963 c 122 § 23.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.17.240 Collection, deposit and use of fees—Bond of inspectors-at-large—Accounting. The inspectors-at-large in charge of such inspections shall collect the fees therefor and deposit them in the horticultural district fund in any bank in the district approved for the deposit of state funds. The inspectors-at-large shall expend fees deposited in the horticultural district fund to assist in defraying the expenses of inspections and they shall make payments from the horticultural district fund to the horticultural inspection trust fund in Olympia as authorized by the director in accordance with RCW 15.04.100. Inspectors-at-large shall furnish bonds to the state in amounts set by the director of the department of general administration, pursuant to RCW 43.19.540, with sureties approved by the director of agriculture, conditioned upon the faithful handling of said funds for the purposes specified; and shall, on or before the tenth day of each month, render to the director of agriculture a detailed account of the receipts and disbursements for the preceding month. [1975 c 40 § 3; 1963 c 122 § 24.]

15.17.250 Annual reports of inspectors-at-large—Reduction in service fees, when. On the thirtieth day of June of each year the inspectors-at-large shall render to the legislative authority of every county in which such service has been rendered in their districts, a complete account of the past year's business. In the event that there is money remaining in any horticulture district fund after all expenses for the current year's services have been paid, the service fees charged to contributors in the following year shall be reduced by the amount by which the money remaining in the fund exceeds the average of the gross fee income for the current year and the immediately preceding year. [1977 ex.s. c 26 § 1; 1969 ex.s. c 76 § 3; 1963 c 122 § 25.]

15.17.260 Injunctions. The director may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to this chapter in the superior court in which such violation occurs, notwithstanding the existence of other remedies at law. [1963 c 122 § 26.]

15.17.270 Cooperation with governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1963 c 122 § 31.]

15.17.280 Exemptions. There shall be exempt from the provisions of this chapter the sale of up to five hundred pounds of any fruits or vegetables sold by any producer where grown by any producer and sold directly by producer to ultimate consumer: PROVIDED, That such fruits and vegetables shall meet the requirements of RCW 15.17.040. [1963 c 122 § 32.]

Exemptions: RCW 15.17.130.

15.17.290 General penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1963 c 122 § 30.]

15.17.900 Provisions cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1963 c 122 § 27.]

15.17.910 Savings—1963 c 122. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this chapter. [1963 c 122 § 28.]

15.17.920 Continuation of rules adopted pursuant to repealed chapter. The repeal of chapter 15.16 RCW and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of chapter 15.16 RCW not in conflict with the provisions of this chapter and in effect immediately prior to such repeal. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.05 RCW, as enacted or hereafter amended, concerning the adoption of rules. Any amendment or repeal of such rules after July 1, 1963 shall be subject to the provisions of chapter 34.05 RCW as

enacted or hereafter amended, concerning the adoption of rules. [1963 c 122 § 29.]

Continuation of grades and classifications adopted pursuant to repealed chapter: RCW 15.17.120.

15.17.930 Effective date—1963 c 122. The effective date of this chapter is July 1, 1963. [1963 c 122 § 34.]

15.17.940 Severability—1963 c 122. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 122 § 33.]

15.17.950 Repealer. Sections 15.16.010 through 15.16.490, chapter 11, Laws of 1961, and RCW 15.16.010 through 15.16.490 are hereby repealed. [1963 c 122 § 35.]

Chapter 15.21
WASHINGTON FRESH FRUIT SALES LIMITATION ACT

Sections

15.21.010 Declaration of purpose. Limitations or restrictions placed on the buyer by the seller offering fresh fruit for sale as to the amount that such prospective buyer may purchase of the total amount of such fresh fruit owned, possessed or controlled by the seller, may lead to or cause confusion, deceptive trade practices, and interfere with the orderly marketing of fresh fruit necessary for the public health and welfare, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the general health and welfare of the people of this state. [1965 c 61 § 1.]

15.21.020 Unlawful practices. It shall be unlawful to cause a limitation to be placed on the amount of fresh fruit that a purchaser may buy at retail or wholesale when such fresh fruit is offered for sale, through any media, below cost to the seller. The foregoing shall apply to all such fresh fruit offered for sale below cost and owned, possessed or controlled by such seller. [1965 c 61 § 2.]

15.21.030 Cost. Cost for the purpose of this chapter, shall be that price paid for fresh fruit by the seller or the actual replacement cost for such fresh fruit: PROVIDED, That the delivered invoice price to such seller shall be prima facie evidence of the price paid for such fresh fruit by the seller. [1965 c 61 § 3.]

15.21.040 Combination sales. When one or more items are offered for sale or sold with one or more items at a combined price, or offered individually or as a package or a unit to be given with the sale of one or more items, each and all such items shall for the purpose of this chapter be deemed to be offered for sale, and as to such transaction the cost basis shall be the combined cost basis of all such items as determined pursuant to RCW 15.21.030. [1965 c 61 § 4.]

15.21.050 Injunction. Any person, prosecuting attorney, or the attorney general may bring an action to enjoin the violation or threatened violation of the provisions of this chapter in the superior court in the county where such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1965 c 61 § 5.]

15.21.060 Penalties. Any person violating the provisions of this chapter is guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent offense: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1965 c 61 § 6.]

15.21.070 Exempt sales. The provisions of this chapter shall not apply to the following sales at retail or sales at wholesale:

(1) When fresh fruit is sold for charitable purposes or to relief agencies;

(2) When fresh fruit is sold on contract to departments of the government or governmental institutions;

(3) When fresh fruit is sold by any officer acting under the order or direction of any court. [1965 c 61 § 7.]

15.21.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 c 61 § 8.]

15.21.910 Short title. This chapter may be cited as the Washington fresh fruit sales limitation act. [1965 c 61 § 9.]

15.21.920 Severability—1965 c 61. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 61 § 10.]

Chapter 15.24
APPLE ADVERTISING COMMISSION

Sections

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.

15.24.010 Definitions. As used in this chapter:

(1) "Commission" means the Washington state apple advertising commission;

(2) "Ship" means to load apples into a conveyance for transport, except apples being moved from the orchard where grown to a packing house or warehouse within the immediate area of production;

(3) "Handler" means any person who ships or initiates a shipping operation, whether for himself or for another;

(4) "Dealer" means any person who handles, ships, buys, or sells apples, or who acts as sales or purchasing agent, broker, or factor of apples;

(5) "Processor" and "processing plant" means every person to whom and every place to which apples are delivered for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;

(6) "Processing apples" means all apples delivered to a processing plant for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;

(7) "Fresh apples" means all apples other than processing apples;

(8) "Director" means the director of the department of agriculture or his duly authorized representative;

(9) "Grower district No. 1" includes the counties of Chelan, Okanogan, and Douglas;

(10) "Grower district No. 2" includes the counties of Kittitas, Yakima, Benton, and Franklin;

(11) "Grower district No. 3" includes all counties in the state not included in the first and second districts;

(12) "Dealer district No. 1" includes the area of the state north of Interstate 90;

(13) "Dealer district No. 2" includes the area of the state south of Interstate 90; and

(14) "Executive officer" includes, but is not limited to, the principal management executive, sales manager, general manager, or other executive employee of similar responsibility and authority. [1989 c 354 § 53; 1967 c 240 § 22; 1963 c 145 § 1; 1961 c 11 § 15.24.010. Prior: 1937 c 195 § 2; RRS § 2874-2.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.24.020 Commission created—Generally. There is hereby created a Washington state apple advertising commission to be thus known and designated. The commission shall be composed of nine practical apple producers and four practical apple dealers. The director shall be an ex officio member of the commission without vote.

The nine producer members shall be citizens and residents of this state, over the age of twenty-five years, each of whom, either individually or as an executive officer of a corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a period of five years, currently operates a commercial producing orchard in the district represented, and has during that period derived a substantial portion of his income therefrom: PROVIDED, That he may own and operate an apple warehouse and pack and store apples grown by others, without being disqualified, so long as a substantial quantity of the apples handled in such warehouse are grown by him; and he may sell apples grown by himself and others so long as he does not sell a larger quantity of apples grown by others than those grown by himself. The four dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association, or cooperative organization, are and have been actively engaged as dealers in apples within the state of Washington for a period of five years, and are citizens and residents of this state, and are engaged as apple dealers in the district represented. The qualifications of members of the commission as herein set forth must continue during their term of office. [1989 c 354 § 54; 1967 c 240 § 23; 1963 c 145 § 2; 1961 c 11 § 15.24.020. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.24.030 Members—Election—Terms—District subdivisions—Meetings. Thirteen persons with the qualifications stated in RCW 15.24.020 shall be elected members of said commission. Four of the grower members, being positions one, two, three and four, shall be from grower district No. 1, at least one of whom shall be a resident of and engaged in growing and producing apples in Okanogan county; four of the grower members, being positions five, six, seven and eight, from grower district No. 2; and one grower member, being position nine from grower district No. 3. Two of the dealer members, being positions ten and eleven, shall be from dealer district No. 1; and two of the dealer members, being positions twelve and thirteen, shall be from dealer district No. 2.

The commission shall have authority in its discretion to establish by regulation one or more subdivisions of grower district No. 1 and one or more subdivisions of grower district No. 2; provided that each of the same includes a substantial apple producing district or districts, and provided the same does not result in an unfair or unequitable voting situation or an unfair or unequitable representation of apple growers on said commission. In such event each of said subdivisions shall be entitled to be represented by one of the said grower members of the commission, who shall be elected by vote of the qualified apple growers in said subdivision of said district, and who shall be a resident of and engaged in growing and producing apples in said subdivision.

The regular term of office of the members of the commission shall be three years from March 1 following their election and until their successors are elected and qualified. The commission shall hold its annual meeting during the month of March each year for the purpose of electing officers and the transaction of other business and shall hold such other meetings during the year as it shall determine. [1989 c 354 § 55; 1967 c 240 § 24; 1963 c 145 § 3; 1961 c 11 § 15.24.030. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.24.040 Members—Nominations. The director shall call a meeting of apple growers, and meetings of apple dealers in dealer district No. 1 and dealer district No. 2 for the purpose of nominating their respective members of the commission, when a term is about to expire, or when a vacancy exists, except as provided in RCW 15.24.050, as amended, at times and places to be fixed by the commission. Said meetings shall be held not later than February 15th of each year and insofar as practicable, the said meetings of the growers shall be held at the same time and place as the annual meeting of the Washington state horticultural association, or the annual meeting of any other producer organization which represents a majority of the state's apple producers, as determined by the commission, but not while the same is in actual session. Public notice of such meetings shall be given by the commission in such manner as it may determine: PROVIDED, That nonreceipt of the notice by any interested person shall not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the said respective meetings. Nominations may also be made within five days after any such meeting by written petition filed in the Wenatchee office of the commission, signed by not less than five apple growers or dealers, as the case may be, residing within the district or within the subdivision if the nomination is made from a subdivision.

The members of the commission shall be elected by secret mail ballot under the supervision of the director: PROVIDED, That in any case where there is but one nomination for a position, a secret mail ballot shall not be conducted or required and the director shall certify the candidate to be elected. Grower members of the commission shall be elected by a majority of the votes cast by the apple growers in the respective districts or subdivisions thereof, as the case may be, each grower who operates a commercial producing apple orchard within the district or subdivision being represented, whether an individual proprietor, partnership, joint venture, or corporation, being entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. An individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he is also a member of a partnership or corporation which votes for other apple acreage. Dealer members of the commission shall be elected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being entitled to one vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes. [1989 c 354 § 56; 1967 c 240 § 25; 1963 c 145 § 4; 1961 c 11 § 15.24.040. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.24.050 Vacancies—Quorum—Compensation—Travel expenses. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position until the next annual meeting shall be filled by vote of the remaining members of the commission. At such annual meeting a commissioner shall be elected to fill the balance of the unexpired term.

A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 12; 1975-'76 2nd ex.s. c 34 § 12; 1967 c 240 § 26; 1961 c 11 § 15.24.050. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.24.060 Commission records as evidence. Copies of the proceedings, records and acts of the commission, when certified by the secretary and authenticated by the corporate seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1961 c 11 § 15.24.060. Prior: 1937 c 195 § 4, part; RRS § 2874-4, part.]

15.24.070 Powers and duties. The Washington state apple advertising commission is hereby declared and created a corporate body. The powers and duties of the commission shall include the following:

(1) To elect a chairman and such other officers as it deems advisable; and to adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To investigate and prosecute violations hereof;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and products thereof;

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued, adopt a corporate seal, and have all of the powers of a corporation;

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient; and

(10) To borrow money and incur indebtedness. [1987 c 393 § 3; 1986 c 203 § 3; 1963 c 145 § 5; 1961 c 11 § 15.24.070. Prior: (i) 1937 c 195 § 8; RRS § 2874-8. (ii) 1937 c 195 § 5; RRS § 2874-5. (iii) 1937 c 195 § 4, part; RRS § 2874-4, part.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.24.080 Research, advertising, and educational campaign. The commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign as continuous as the crop, sales and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of the markets and extent to which public convenience and necessity require research and advertising to be conducted. [1961 c 11 § 15.24.080. Prior: 1937 c 195 § 13, part; RRS § 2874-13, part.]

15.24.085 Promotional printing not restricted by public printer laws. The restrictive provisions of chapter 43.78 RCW shall not apply to promotional printing and literature for the Washington state apple advertising commission, the Washington state fruit commission, or the Washington state dairy products commission. [1961 c 11 § 15.24.085. Prior: 1953 c 222 § 1.]

15.24.086 Promotional printing contracts—Contractual conditions of employment. All such printing contracts provided for in this section and RCW 15.24.085 shall be executed and performed under conditions of employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the industrial welfare committee regarding conditions of employment, hours of labor, and minimum wages, and the violation of such provision of any contract shall be ground for cancellation thereof. [1973 1st ex.s. c 154 § 20; 1961 c 11 § 15.24.086. Prior: 1953 c 222 § 2.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

15.24.090 Increase in assessments—Grounds—Procedure. If it appears from investigation by the commission that the revenue from the assessment levied on fresh apples under this chapter is inadequate to accomplish the purposes of this chapter, the commission shall adopt a resolution setting forth the necessities of the industry, the extent and probable cost of the required research, market promotion, and advertising, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. It shall thereupon increase the assessment to a sum determined by the commission to be necessary for those purposes based upon a rate per one hundred pounds of apples, gross billing weight, shipped in bulk, container, or any style of package. An increase becomes effective sixty days after the resolution is adopted or on any other date provided for in the resolution, but shall be first referred by the commission to a referendum mail ballot by the apple growers of this state conducted under the supervision of the director and be approved by a majority of the growers voting on it and also be approved by voting growers who operate more than fifty percent of the acreage voted in the same election. After the mail ballot, if favorable to the increase, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve the increase. [1983 c 95 § 1; 1979 c 20 § 1; 1967 c 240 § 27; 1963 c 145 § 6; 1961 c 11 § 15.24.090. Prior: 1953 c 43 § 1; 1937 c 195 § 13, part; RRS § 2874-13, part.]

15.24.100 Assessments levied. There is hereby levied upon all fresh apples grown annually in this state, and all apples packed as Washington apples, an assessment of twelve cents on each one hundred pounds gross billing weight, plus such annual increases thereof as are imposed pursuant to the provisions of RCW 15.24.090. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter. [1967 c 240 § 28; 1963 c 145 § 7; 1961 c 11 § 15.24.100. Prior: 1937 c 195 § 9; RRS § 2874-9.]

15.24.110 Collection—Due date—Stamps. The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, prior to shipment, and no fresh apples shall be carried, transported, or shipped by any person or by any carrier, railroad, truck, boat, or other conveyance until the assessment has been paid or provision made therefor satisfactory to the commission.

The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "apple advertising stamps" to be purchased from the commission and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. [1967 c 240 § 29; 1961 c 11 § 15.24.110. Prior: 1937 c 195 § 12; RRS § 2874-12.]

15.24.120 Records kept by dealers, handlers, processors. Each dealer, handler, and processor shall keep a complete and accurate record of all apples handled,

shipped, or processed by him. This record shall be in such form and contain such information as the commission may by rule or regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents. [1961 c 11 § 15.24.120. Prior: 1937 c 195 § 10; RRS § 2874-10.]

15.24.130 Returns rendered by dealers, handlers, processors. Each dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of apples handled, shipped, or processed by him during the period prescribed by the commission. The return shall contain such further information as the commission may require. [1961 c 11 § 15.24.130. Prior: 1937 c 195 § 11; RRS § 2874-11.]

15.24.140 Right to inspect. The commission may inspect the premises and records of any carrier, handler, dealer, or processor for the purpose of enforcing this chapter and the collection of the excise tax. [1961 c 11 § 15.24.140. Prior: 1937 c 195 § 19; RRS § 2874-19.]

15.24.150 Treasurer—Bond—Duties—Funds. The commission shall appoint a treasurer who shall file with it a fidelity bond executed by a surety company authorized to do business in this state, in favor of the commission and the state, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his duties and strict accounting of all funds of the commission.

All money received by the commission, or any other state official from the assessment herein levied, shall be paid to the treasurer, deposited in such banks as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [1961 c 11 § 15.24.150. Prior: 1937 c 195 § 6; RRS § 2874-6.]

15.24.160 Promotional plans—Cooperation of commission. The commission may employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission for the purpose of promoting the general welfare of the apple industry and particularly for the purpose of assisting in the sale and distribution of apples in domestic or foreign commerce, and expend its funds or such portion thereof as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of apples in domestic or foreign commerce. For such purposes it may employ and pay for legal counsel and contract and pay for other professional services. [1961 c 11 § 15.24.160. Prior: 1947 c 280 § 3; Rem. Supp. 1947 § 2909-3.]

15.24.170 Rules and regulations—Filing—Publication. Rules, regulations, and orders made by the commission shall be filed with the director and published in a legal newspaper in the cities of Wenatchee and Yakima within five days after being made, and shall become effective pursuant to the provisions of RCW 34.05.040. [1975 1st ex.s. c 7 § 37; 1961 c 11 § 15.24.170. Prior: 1937 c 195 § 18; RRS § 2874-18.]

15.24.180 Enforcement. All county and state law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.24.180. Prior: 1937 c 195 § 16; RRS § 2874-16.]

15.24.190 Claims enforceable against commission assets—Nonliability of other persons and entities—Exception. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee, or agent of the commission in his or her individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime. No such person or employee may be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member is liable for the default of any other member. [1987 c 393 § 4; 1961 c 11 § 15.24.190. Prior: 1937 c 195 § 7; RRS § 2874-7.]

15.24.200 Penalties. Any person who violates or aids in the violation of any provision of this chapter shall be guilty of a gross misdemeanor, and any person who violates or aids in the violation of any rule or regulation of the commission shall be guilty of a misdemeanor. [1961 c 11 § 15.24.200. Prior: 1937 c 195 § 14; RRS § 2874-14.]

15.24.210 Prosecutions. Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his principal place of business.

The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules and regulations of the commission issued hereunder, and to prevent and restrain violations thereof. [1961 c 11 § 15.24.210. Prior: 1937 c 195 § 15; RRS § 2874-15.]

15.24.800 Financing assistance for commission building. The legislature hereby finds that, in order to permit the Washington state apple advertising commission to accomplish more efficiently its important public purposes, as enumerated in chapter 15.24 RCW, it is necessary for the state to assist in financing a new building for the commission, to be located on Euclid Avenue in Chelan county, and housing commission offices, warehouse space, and a display room. The state's assistance shall augment approximately five hundred thousand dollars in commission funds which will be applied directly to the payment of the costs of this project. The state's assistance shall be in the amount of eight hundred thousand dollars, or so much thereof as may

be required, to be provided from the proceeds from the sale and issuance of general obligation bonds of the state, the principal of and interest on which shall be reimbursed to the state treasury by the commission from revenues derived from the assessments levied pursuant to chapter 15.24 RCW and other sources. [1987 c 6 § 1.]

Severability—1987 c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 6 § 12.]

15.24.802 General obligation bonds to fund commission building. For the purpose of providing part of the funds necessary for the Washington state apple advertising commission to undertake a capital project consisting of the land acquisition for, and the design, construction, furnishing, and equipping of, the building described in RCW 15.24.800, and to pay the administrative costs of such project, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, and other expenses incidental to the administration of such project, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eight hundred thousand dollars, or so much thereof as may be required. [1987 c 6 § 2.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.804 Bond issuance and sale. The bonds authorized in RCW 15.24.802 shall be issued and sold in accordance with the provisions of chapter 39.42 RCW. [1987 c 6 § 3.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.806 Bond proceeds, etc., to state building construction account. The proceeds from the sale of the bonds authorized in RCW 15.24.802, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the Washington state apple advertising commission may direct the state treasurer to deposit therein, shall be deposited in the state building construction account in the state treasury. [1987 c 6 § 4.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.808 Expenditure of bond proceeds. Subject to legislative appropriation, all proceeds from the sale of the bonds authorized in RCW 15.24.802 shall be administered and expended by the Washington state apple advertising commission exclusively for the purposes specified in RCW 15.24.802. [1987 c 6 § 5.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.810 Fund for payment of bond principal and interest. The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized to be issued under RCW 15.24.802. The state finance committee may provide for the creation of one or more separate accounts in such fund to facilitate payment of such principal and interest.

On or before June 30 of each year, the state finance committee shall certify to the state treasurer the amounts required in the next succeeding twelve months for the payment of the principal of and the interest on such bonds coming due in accordance with the provisions of the bond proceedings. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, the amount certified by the state finance committee to be due on the payment date. [1987 c 6 § 6.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.812 Certification and payment of bond principal and interest. On or before June 30 of each year, the state finance committee shall certify to the Washington state apple advertising commission the principal and interest payments determined under RCW 15.24.810, exclusive of deposit interest credit, attributable to the bonds issued under RCW 15.24.802. On each date on which any interest or principal and interest payment is due, the commission shall cause the amount certified by the state finance committee to be due on such date to be paid out of the commission's general fund to the state treasurer for deposit into the general fund of the state treasury. [1987 c 6 § 7.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.814 RCW 15.24.810 and 15.24.812 not exclusive method of payment. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 15.24.802, and RCW 15.24.810 and 15.24.812 shall not be deemed to provide an exclusive method for the payment of such principal and interest. [1987 c 6 § 8.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.816 Bonds constitute legal investments for state and other public funds. The bonds authorized by RCW 15.24.802 shall constitute legal investments for all state funds or for funds under state control and all funds of any other public body. [1987 c 6 § 9.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.818 Bonds to be issued only after certification of sufficiency of funds. The bonds authorized by RCW 15.24.802 shall be issued only after the treasurer of the Washington state apple advertising commission has certified that the net proceeds of the bonds, together with all money to be made available by the commission for the purposes described in RCW 15.24.802, shall be sufficient for such purposes; and also that, based upon the treasurer's estimates of future income from assessments levied pursuant to chapter 15.24 RCW and other sources, an adequate balance will be maintained in the commission's general fund to enable the commission to meet the requirements of RCW 15.24.812 during the life of the bonds to be issued. [1987 c 6 § 10.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.900 Purpose of chapter. This chapter is passed:

(1) In the exercise of the police power of the state to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state;

(2) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington apples in domestic and foreign markets;

(4) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;

(5) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(6) Because the stabilizing of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;

(7) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary;

(8) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put. [1961 c 11 § 15.24.900. Prior: 1937 c 195 § 1; RRS § 2874-1.]

15.24.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.24.910. Prior: 1937 c 195 § 17; RRS § 2874-17.]

15.24.920 Severability—1967 c 240. See note following RCW 43.23.010.

Chapter 15.26
TREE FRUIT RESEARCH ACT

Sections

15.26.010 Short title. This chapter shall be known and cited as the "tree fruit research act." [1969 c 129 § 1.]

15.26.020 Purpose. The purpose of this chapter is for the creation of a commission which shall promote and carry on research and administer specific industry service programs, including but not limited to sanitation programs, which will or may benefit the planting, production, harvesting, handling, processing or shipment of tree fruit of this state, which shall collect assessments on tree fruit in this state and which shall coordinate its research efforts with those of other state, federal, or private agencies doing similar research. [1983 c 281 § 1; 1969 c 129 § 2.]

15.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his duly authorized representative.

(3) "Person" means any natural persons, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(4) "Producer" means any person who owns or is engaged in the business of commercially producing tree fruit or has orchard plantings intended for commercial tree fruit production.

(5) "Sanitation program" means a program designed to eliminate pests and/or plants or trees which serve as hosts to pests or diseases of tree fruits. [1983 c 281 § 2; 1969 c 129 § 3.]

15.26.040 Tree fruit research commission created—Membership. There is hereby created the Washington tree

fruit research commission, to be thus known and designated. The commission shall be composed of nine members. Three members to be appointed by the Washington state fruit commission, five members to be appointed by the apple advertising commission, and one member representing the winter pear industry to be appointed by the director. The director or his duly authorized representative shall be ex officio member with a vote, to represent all assessed commodities. The appointed members of the commission shall serve at the will of their respective appointers even though appointed for specific terms as set forth in RCW 15.26.070. [1969 c 129 § 4.]

15.26.050 Qualifications of members. Nine members of the commission shall be producers who are citizens and residents of this state. Each producer member shall be over the age of twenty-five years and have been actively engaged in growing tree fruits in this state and deriving a substantial portion of his income therefrom, or having a substantial amount of orchard acreage devoted to tree fruit production or as an owner, lessee, partner or an employee or officer of a firm engaged in the production of tree fruit whose responsibility to such firm shall be primarily in the production of tree fruit. Such employee or officer of such firm shall be actually engaged in such duties relating to the production of tree fruit with such firm or any other such firm for a period of at least five years. The qualifications of the members of the commission set forth in this section shall continue during their term of office. [1969 c 129 § 5.]

15.26.060 Appointment of members. The apple advertising commission shall appoint producer members to positions one through five on the commission. The Washington state fruit commission shall appoint producer members to positions six through eight on the commission. The director shall appoint a producer who derives a substantial portion of his income from the production of winter pears. [1969 c 129 § 6.]

15.26.070 Terms of members. The terms of the members of commission shall be staggered and each shall serve for a term of three years and until their successor has been appointed and qualified: PROVIDED, That the first appointments to the commission beginning July 30, 1969, shall be for the following terms:

(1) Positions one, four, and seven, one year.

(2) Positions two, five, and eight, two years.

(3) Positions three, six, and nine, three years. [1969 c 129 § 7.]

15.26.080 Vacancies. In the event a commission member resigns, is disqualified, or vacates his position on the commission for any other reason, the appointing agency that originally appointed such member shall within sixty days appoint a new member to fill the term of the vacated member. [1969 c 129 § 8.]

15.26.090 Quorum. A majority of the members of the commission shall constitute a quorum for the transaction of all business and carrying out the duties of the commission: PROVIDED, That on all fiscal matters, approval for passage must be by at least two-thirds majority of the said quorum. [1969 c 129 § 9.]

15.26.100 Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 13; 1975-'76 2nd ex.s. c 34 § 13; 1969 c 129 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.26.110 Powers of commission. The powers of the commission shall include the following:

(1) To elect a chairman, treasurer, and such other officers as it deems advisable;

(2) To adopt any rules and regulations necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as enacted or hereafter amended;

(3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;

(4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;

(5) To own, lease or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;

(6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;

(7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;

(8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including actions for injunction, mandatory injunctions, or civil recovery, or proceedings before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;

(9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state or local, or enter into agreements with other states or federal agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;

(10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;

(11) Such other powers and duties that are necessary to carry out the purpose of this chapter. [1969 c 129 § 11.]

15.26.120 Assessments levied—Referendum. There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such commercial tree fruit shall not become effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the apple advertising commission, Washington state fruit commission and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disapprove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission. [1969 c 129 § 12.]

15.26.130 List of producers. The apple advertising commission and the Washington state fruit commission shall supply the director with a list of known producers subject to paying assessments to the respective commissions. The director, in addition, shall at the commission's cost compile a list of known tree fruit producers producing fruit not subject to assessments of the apple advertising commission and the Washington state fruit commission but subject to assessments or becoming subject to assessments under the provisions of this chapter. In compiling such list the director shall publish notice to producers of such tree fruit, requiring them to file with the director a report giving the producer's name, mailing address and orchard location. The notice shall be published once a week for four consecutive weeks in weekly or daily newspapers of general circulation in the area or areas where such tree fruit is produced. All producer reports shall be filed with the director within twenty days from the date of last publication of notice or thirty days of mailing notice to producers of such tree fruit, whichever is later. The director shall for the purpose of conducting any referendum affecting tree fruits subject to the provisions of this chapter keep such list up to date when conducting such referendum. Every person who becomes a producer after said list is compiled shall file with the director a similar report, giving his name, mailing address and orchard location. Such list shall be final and conclusive in conducting referendums and failure to notify a producer shall not be cause for the invalidation of any referendum. [1969 c 129 § 13.]

15.26.140 Increase in assessments by referendum. The producers of tree fruit subject to the provisions of this chapter may subsequent to approving initial assessment increase such assessment by referendum when approved by a majority of the producers voting. [1969 c 129 § 14.]

15.26.150 Additional assessments for special projects. The producers of any specific tree fruit subject to the provisions of this chapter may at any time by referendum conducted by the department and approved by a majority of the producers voting of such specific tree fruit establish an additional assessment on such specific tree fruit for special research projects of special interest to such specific tree fruit. [1969 c 129 § 15.]

15.26.155 Additional assessment. The producers of tree fruit subject to the provisions of this chapter may at any time, by referendum conducted by the department and approved by a majority of the producers voting, establish an additional assessment for programs including but not limited to sanitation programs and the reregistration of plant protection products for use on minor crops. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend all or part of the assessments on tree fruit under this section. [1991 c 257 § 2; 1983 c 281 § 3.]

15.26.160 Suspension of assessments. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend for a period not exceeding one crop year at a time all or part of the assessments on tree fruit subject to the provisions of this chapter. [1969 c 129 § 16.]

15.26.170 Payment of assessments required before purchase, receipt or shipment of fruit. Such assessments will be due from the producers. No person shall purchase, or receive for sale, or shipment out of state any tree fruits subject to the provisions of this chapter until he has received proof that the assessment due and payable the commission has been paid. [1969 c 129 § 17.]

15.26.180 Records of persons receiving fruit. Any person receiving commercial tree fruits from any producer thereof or any producer of tree fruit who prepared or processed his own tree fruit for sale, or shipment for sale shall keep complete and accurate records of all such tree fruit. Such records shall meet the requirements of rules or regulations prescribed by the commission and shall be kept for two years subject to inspection by duly authorized representatives of the commission. [1969 c 129 § 18.]

15.26.190 Return of dealers, handlers, and processors—Filing—Contents. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of tree fruit, subject to the provisions of this chapter, handled, shipped, or processed by him during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [1969 c 129 § 19.]

15.26.200 Assessments—When due and payable—Collection. Such assessments on tree fruits shall be due and payable by the producer thereof by the end of the next business day that such tree fruits are sold or shipped for sale unless such time is extended as provided for in RCW 15.26.210 by rule or regulation of the commission. The commission may by rule or regulation provide that such assessments shall be collected from the producer and remitted by the person purchasing, or receiving such tree fruit for sale, processing, or shipment anywhere. [1969 c 129 § 20.]

15.26.210 Assessments—Constitute personal debt. Any due and payable assessments herein levied shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable as provided for in RCW 15.26.200, unless the commission by rules or regulations provides for payment to be made not later than thirty days after the time set forth in RCW 15.26.200: PROVIDED, That such extension of time shall not apply to any person who is in arrears in his payments to the commission. [1969 c 129 § 21.]

15.26.220 Assessments—Failure to pay—Collection. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the commission may add to such unpaid assessment or sum an amount not more than ten percent but not less than one dollar of the same to defray the cost of enforcing the collection of such assessment, together with interest on the unpaid balance of one percent per month commencing the first month following the month in which payment was due. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the interest and the above specified ten percent thereon, and such reasonable attorneys' fees as may be allowed by the court, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 129 § 22.]

15.26.230 Disposition of moneys collected—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, and be deposited by him in banks designated by the commission, and disbursed on the order of the commission. The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in a sum to be fixed by the commission, but not less than twenty-five thousand dollars, and conditioned upon his faithful performance of his duties and his strict accounting of all funds of the commission. RCW 43.01.050 shall not apply to money collected under this chapter. [1969 c 129 § 23.]

15.26.235 Collection, administration, and dispersal of funds for industry service programs. Funds collected and expenditures made for specific industry service programs shall be collected, administered, and dispersed separately from all other funds authorized and collected for research by the commission. The commission may appoint a committee to advise them regarding the need for specific industry service programs and regarding the administration of the assessments collected under RCW 15.26.155. [1983 c 281 § 4.]

15.26.240 Nonliability of state, members, employees. Obligations incurred by the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or acts of the commission shall exist against either the state of Washington, or against any member, officer, employee, or agent of the commission in his individual capacity. The members of the commission including employees of the commission, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall not be several and joint and no member shall be liable for the default of any other member. [1969 c 129 § 24.]

15.26.250 Collection of assessments for commission by apple advertising commission and state fruit commission. The apple advertising commission and Washington state fruit commission in order to avoid unnecessary duplication of costs and efforts in collecting assessments for tree fruits at the time said commissions collect assessments due under the provisions of their acts may also collect the assessment due the commission on such tree fruit. Such assessments on winter pears may be collected by the Washington state fruit commission or in a manner prescribed by the commission. Assessments collected for the commission by the Washington state apple advertising commission and the Washington state fruit commission shall be forwarded to the commissions expeditiously. No fee shall be charged the commission for the collection of assessments because the research conducted by the commission shall be of direct benefit to all commercial growers of tree fruits in the state of Washington: PROVIDED, That the commission shall reimburse at actual cost to the department or the Washington state fruit commission or apple commission any assessment collected for the commission by such agencies for any tree fruit subject to the provisions of this chapter, but not subject to pay assessments to the Washington state fruit commission or the apple advertising commission. [1969 c 129 § 25.]

15.26.260 Legal costs and expenses to be borne by commission. All legal costs and expenses that may be incurred in the collection of delinquent accounts owed this commission shall be borne by the commission; except as provided for otherwise in RCW 15.26.220. [1969 c 129 § 26.]

15.26.270 Copies of commission's proceedings, records, acts as evidence. Copies of the commission's

proceedings, records, and acts when certified by the secretary and authenticated by the commission's seal shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1969 c 129 § 27.]

15.26.280 Moneys collected retained by commission. All moneys collected by the commission under the provisions of this chapter shall be retained by the commission for the purpose of carrying out the purpose and provisions of this chapter. The commission may accept and retain any moneys from private persons or private or public agencies to carry out the purposes and provisions of this chapter. [1969 c 129 § 28.]

15.26.290 Contracts with public or private agencies to carry out chapter. The commission may enter into agreement or contract with any private person or any private or public agency whether federal, state or local in order to carry out the purposes and provisions of this chapter. [1969 c 129 § 29.]

15.26.300 Violations—Penalty. Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 c 129 § 30.]

15.26.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 c 129 § 32.]

15.26.910 Severability—1969 c 129. If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 c 129 § 33.]

Chapter 15.28
SOFT TREE FRUITS

Sections

15.28.010 Definitions. As used in this chapter:

(1) "Commission" means the Washington state fruit commission.

(2) "Shipment" or "shipped" includes loading in a conveyance to be transported to market for resale, and includes delivery to a processor or processing plant, but does not include movement from the orchard where grown to a packing or storage plant within this state for fresh shipment;

(3) "Handler" means any person who ships or initiates the shipping operation, whether as owner, agent or otherwise;

(4) "Dealer" means any person who handles, ships, buys, or sells soft tree fruits other than those grown by him, or who acts as sales or purchasing agent, broker, or factor of soft tree fruits;

(5) "Processor" or "processing plant" includes every person or plant receiving soft tree fruits for the purpose of drying, dehydrating, canning, pressing, powdering, extracting, cooking, quick-freezing, brining, or for use in manufacturing a product;

(6) "Soft tree fruits" mean Bartlett pears and all varieties of cherries, apricots, prunes, plums, and peaches, which includes all varieties of nectarines. "Bartlett pears" means and includes all standard Bartlett pears and all varieties, strains, subvarieties, and sport varieties of Bartlett pears including Red Bartlett pears, that are harvested and utilized at approximately the same time and approximately in the same manner.

(7) "Commercial fruit" or "commercial grade" means soft tree fruits meeting the requirements of any established or recognized fresh fruit or processing grade. Fruit bought or sold on orchard run basis and not subject to cull weighback shall be deemed to be "commercial fruit."

(8) "Cull grade" means fruit of lower than commercial grade except when such fruit included with commercial fruit does not exceed the permissible tolerance permitted in a commercial grade;

(9) "Producer" means any person who is a grower of any soft tree fruit;

(10) "District No. 1" or "first district" includes the counties of Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane and Lincoln;

(11) "District No. 2" or "second district" includes the counties of Kittitas, Yakima, and Benton county north of the Yakima river;

(12) "District No. 3" or "third district" comprises all of the state not included in the first and second districts. [1989 c 354 § 27; 1973 c 11 § 1; 1963 c 51 § 1; 1961 c 11 § 15.28.010. Prior: 1955 c 47 § 1; 1947 c 73 § 1; Rem. Supp. 1947 § 2909-10.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.28.020 Commission created—Members, voting and ex officio—Quorum. A corporation to be known as the Washington state fruit commission is hereby created, composed of sixteen voting members, to wit: Ten producers, four dealers, and two processors, who shall be elected and qualified as herein provided. The director of agriculture, hereinafter referred to as the director, or his duly authorized representative, shall be an ex officio member without a vote.

A majority of the voting members shall constitute a quorum for the transaction of any business. [1967 c 191 § 1; 1961 c 11 § 15.28.020. Prior: (i) 1947 c 73 § 2; Rem. Supp. 1947 § 2901-11. (ii) 1947 c 73 § 9; Rem. Supp. 1947 § 2909-18. (iii) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

Effective date—1967 c 191: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That section 5 of this 1967 amendatory act shall not take effect until July 1, 1968." [1967 c 191 § 9.] For codification of 1967 c 191, see Codification Tables, Volume 0.

15.28.030 Qualifications of voting members. All voting members must be citizens and residents of this state. Each producer member must be over the age of twenty-five years, and be, and for five years have been, actively engaged in growing soft tree fruits in this state, and deriving a substantial portion of his income therefrom, or have a substantial amount of orchard acreage devoted to soft tree fruit production as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of soft tree fruit. He cannot be engaged directly in business as a dealer. Each dealer member must be actively engaged, either individually or as an executive officer, employee or sales manager on a management level, or managing agent of an organization, as a dealer. Each processor member must be engaged, either individually or as an executive officer, employee on a management level, sales manager, or managing agent of an organization, as a processor. Only one dealer member may be in the employ of any one person or organization engaged in business as a dealer. Only one processor member may be in the employ of any one person or organization engaged in business as a processor. Said qualifications must continue throughout each member's term of office. [1967 c 191 § 2; 1961 c 11 § 15.28.030. Prior: 1947 c 73 § 3; Rem. Supp. 1947 § 2909-12.]

15.28.040 Election of voting members—Positions. Of the producer members, four shall be elected from the first district and occupy positions one, two, three and four; four shall be elected from the second district and occupy positions five, six, seven and eight, and two shall be elected from the third district and occupy positions nine and ten.

Of the dealer members, two shall be elected from each of the first and second districts and respectively occupy positions eleven and twelve from the first district and positions thirteen and fourteen from the second district.

The processor members shall be elected from the state at large and occupy positions fifteen and sixteen. The dealer member position previously referred to as position twelve shall henceforth be position thirteen. The processor member position heretofore referred to as position fourteen shall cease to exist on March 21, 1967. The processor member position heretofore referred to as thirteen shall be known as position sixteen. [1967 c 191 § 3; 1961 c 11 § 15.28.040. Prior: 1947 c 73 § 4; Rem. Supp. 1947 § 2909-13.]

15.28.050 Terms of office. The regular term of office of the members of the commission shall be three years commencing on May 1, following the date of election and until their successors are elected and qualified, except, however, that the first term of dealer position twelve in the first district shall be for two years and expire May 1, 1969. [1967 c 191 § 4; 1961 c 11 § 15.28.050. Prior: 1947 c 73 § 5; Rem. Supp. 1947 § 2909-14.]

15.28.055 Terms of present members. Present members of the state fruit commission as provided for in RCW 15.28.020 shall serve until the first day of May of the year in which their terms would ordinarily expire and until their successors are elected and qualified. [1967 c 191 § 8.]

15.28.060 Nominating meetings—Notice—Election—Ballots—Eligible voters. The director shall call meetings at times and places concurred upon by the director and the commission for the purpose of nominating producer, dealer or processor members for election to the commission when such members' terms are about to expire. Notice of such meetings shall be given at least sixty days prior to the time the respective members' term is about to expire. The nominating meetings shall be held at least sixty days prior to the expiration of the respective members' term of office.

Notice shall be given by the commission by mail to all known persons having a right to vote for such respective nominee's election to the commission.

Further, the commission shall publish notice at least once in a newspaper of general circulation in the district where the nomination is to be held. Such a newspaper may be published daily or weekly. The failure of any person entitled to receive notice of such nominating meeting shall not invalidate such nominating meeting or the election of a member nominated at such meeting.

Any person qualified to serve on the commission may be nominated orally at said nomination meetings. Written nominations, signed by five persons qualified to vote for the said nominee, may be made for five days subsequent to said nomination meeting. Such written nominations shall be filed with the commission at its Yakima office.

Members of the commission shall be elected by a secret mail ballot, and such election shall be conducted under the supervision of the director, and the elected candidate shall become a member of the commission upon certification of the director that said elected candidate has satisfied the required qualifications for membership on the commission.

When only one nominee is nominated for any position on the commission, the director shall, if such nominee

satisfies the requirements of the position for which he was nominated, certify the said nominee as to his qualifications and then it shall be deemed that said nominee has been duly elected. Nominees receiving a majority of the votes in an election shall be considered to have been elected and if more than one position is to be filled in a district or at large, the nominees respectively receiving the largest number of votes shall be deemed to have been elected to fill the vacancies from said districts or areas on the commission. Persons qualified to vote for members of the commission shall, except as otherwise provided by law or rule or regulation of the commission, vote only in the district in which their activities make them eligible to vote for a member of the commission.

A producer to be eligible to vote in an election for a producer member of the commission must be a commercial producer of soft tree fruits paying assessments to the commission.

When a legal entity acting as a producer, dealer, or processor is qualified to vote for a candidate in any district or area to serve in a specified position on the commission, such legal entity may cast only one vote for such candidate, regardless of the number of persons comprising such legal entity or stockholders owning stock therein. [1967 c 191 § 6; 1963 c 51 § 2; 1961 c 11 § 15.28.060. Prior: 1947 c 73 § 6; Rem. Supp. 1947 § 2909-15.]

15.28.070 Rules and regulations—Establishment of subdistricts. The commission shall have the authority, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act), for adopting rules and regulations, after public hearing, establishing one or more subdistricts in any one of the three districts. Such subdistricts shall include a substantial portion of the soft tree fruit producing area in the district in which they are formed.

The commission shall, when a subdistrict has been formed within one of the districts as in this section provided for, assign one of the districts' producer positions on the commission to said subdistrict. Such producer position may only be filled by a producer residing in such subdistrict, whether by election, apportionment, or appointment. [1967 c 191 § 7; 1961 c 11 § 15.28.070. Prior: 1947 c 73 § 7; Rem. Supp. 1947 § 2909-16.]

15.28.080 Vacancies on commission—How filled. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position, until the next annual election meeting, shall be filled by vote of the remaining members of the commission. At such annual election a commissioner shall be elected to fill the balance of the unexpired term. [1961 c 11 § 15.28.080. Prior: 1947 c 73 § 8; Rem. Supp. 1947 § 2909-17.]

15.28.090 Compensation of members—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 14; 1975-'76 2nd ex.s. c 34 § 14; 1967 c 191 § 5; 1961 c 11 § 15.28.090. Prior: 1947 c 73 § 10; Rem. Supp. 1947 § 2909-19.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Effective date—1967 c 191: See note following RCW 15.28.020.

15.28.100 Powers of commission. The Washington state fruit commission is hereby declared and created a corporate body. The commission has power:

(1) To exercise all of the powers of a corporation;

(2) To elect a chairman and such other officers as it may deem advisable;

(3) To adopt, amend or repeal, from time to time, necessary and proper rules, regulations and orders for the performance of its duties, which rules, regulations and orders shall have the force of laws when not inconsistent with existing laws;

(4) To employ, and at its pleasure discharge, such attorneys, advertising manager, agents or agencies, clerks and employees, as it deems necessary and fix their compensation;

(5) To establish offices, and incur such expenses, enter into such contracts, and create such liabilities, as it deems reasonably necessary for the proper administration of this chapter;

(6) To accept contributions of, or match private, state or federal funds available for research, and make contributions to persons or state or federal agencies conducting such research;

(7) To administer and enforce this chapter, and do and perform all acts and exercise all powers deemed reasonably necessary, proper or advisable to effectuate the purposes of this chapter, and to perpetuate and promote the general welfare of the soft tree fruit industry of this state;

(8) To sue and be sued. [1961 c 11 § 15.28.100. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iii) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

15.28.110 Duties of commission. The commission's duties are:

(1) To adopt a corporate seal;

(2) To elect a secretary-manager, and a treasurer, and fix their compensation. The same person may be elected to both of said offices;

(3) To establish classifications of soft tree fruits;

(4) To conduct scientific research and develop the healthful, therapeutic and dietetic value of said fruits, and promote the general welfare of the soft tree fruit industry of the state;

(5) To conduct a comprehensive advertising and educational campaign to effectuate the objects of this chapter;

(6) To increase the production, and develop and expand the markets, and improve the handling and quality of said fruits;

(7) To keep accurate accounts and records of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To investigate and prosecute violations hereof. [1961 c 11 § 15.28.110. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part. (ii) 1947 c 73 § 14; Rem. Supp. 1947 § 2909-23. (iii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part. (iv) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909-26, part.]

15.28.120 Copies of records as evidence. Copies of the commission's proceedings, records, and acts, when certified by the secretary and authenticated by the corporate seal, shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1961 c 11 § 15.28.120. Prior: 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

15.28.130 State, personal, nonliability—Obligations limited by collections. Neither the state, nor any member, agent, or employee of the commission, shall be liable for the acts of the commission, or upon its contracts.

All salaries, expenses, costs, obligations and liabilities of the commission, and claims arising from the administration of this chapter, shall be payable only from funds collected hereunder. [1961 c 11 § 15.28.130. Prior: 1947 c 73 § 16; Rem. Supp. 1947 § 2909-25.]

15.28.140 District advisory and state commodity committees. There shall be separate district advisory committees and separate state commodity committees for each of the following soft tree fruits, to wit: Bartlett pears, peaches, apricots, prunes and plums, and cherries. The growers, dealers, or processors of each of the soft tree fruits, at their respective annual district meetings may elect separate district advisory committees for each of the soft tree fruits grown, handled, or processed in their respective districts. The district advisory committee shall consist of five members comprising three growers, one dealer and one processor of the respective soft tree fruit groups. Each state commodity committee shall consist of two members from, and selected by, each district advisory committee for each soft fruit. [1961 c 11 § 15.28.140. Prior: 1947 c 73 § 11; Rem. Supp. 1947 § 2909-20.]

15.28.150 Committee organization—Duties. Each district advisory committee and each state commodity committee shall select one of its members as chairman. Meetings may be called by the chairman or by any two members of any committee by giving reasonable written notice of the meeting to each member of such committee. A majority of the members shall be necessary to constitute a quorum. The district advisory committees and state commodity committees shall consult with and advise the commission on matters pertaining to the soft tree fruits which they respectively represent, and the commission shall give due consideration to their recommendations. Any grower, dealer, or processor, if qualified, may be a member of more than one committee. [1961 c 11 § 15.28.150. Prior: 1947 c 73 § 12; Rem. Supp. 1947 § 2909-21.]

15.28.160 Annual assessment—Exemption—Brined sweet cherries assessable. An annual assessment is hereby levied upon all commercial soft tree fruits grown in the state or packed as Washington soft tree fruit of fifty cents per two thousand pounds (net weight) of said fruits, when shipped fresh or delivered to processors, whether in bulk, loose in containers, or packaged in any style of package, except, that all sales of five hundred pounds or less of such fruits sold by the producer direct to the consumer shall be exempt from said assessments. Sweet cherries which are brined are deemed to be commercial soft tree fruit and therefore assessable hereunder. [1989 c 354 § 28; 1963 c 51 § 3; 1961 c 11 § 15.28.160. Prior: 1947 c 73 § 18; Rem. Supp. 1947 § 2909-27.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.28.170 Research and advertising—Power to increase assessment. The commission shall investigate the needs of soft tree fruit producers, the condition of the markets, and extent to which the same require advertising and research. If the investigation shows that the revenue from the assessments levied is inadequate to accomplish the objects of this chapter, it shall report its findings to the director, showing the necessities of the industry, the probable cost of the required program, and the probable revenue from the existing levy. It may then increase the assessments to be levied to an amount not exceeding two dollars per each two thousand pounds (net weight) of such fruits so contained or packed. [1961 c 11 § 15.28.170. Prior: 1947 c 73 § 25; Rem. Supp. 1947 § 2909-34.]

15.28.175 Promotional printing and literature—Contracts. Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

15.28.180 Increase of assessment for specific fruit or classification—Procedure. The same assessment shall be made for each soft tree fruit, except that if a two-thirds majority of the state commodity committee of any fruit recommends in writing the levy of an additional assessment on that fruit, or any classification thereof, for any year or years, the commission may levy such assessment for that year or years up to the maximum of eighteen dollars for each two thousand pounds of any fruit except cherries or any classification thereof, as to which the assessment may be increased to a maximum of thirty dollars for each two thousand pounds, and except pears covered by this chapter, as to which the assessment may be increased to a maximum of eighteen dollars for each two thousand pounds: PROVIDED, That no increase in the assessment on pears becomes effective unless the increase is first referred by the commission to a referendum by the Bartlett pear growers of the state and is approved by a majority of the growers voting on the referendum. The method and procedure of conducting the referendum shall be determined by the commission. Any funds so raised shall be expended solely for the purposes provided in this chapter and solely for such fruit, or classification thereof.

The commission has the authority in its discretion to exempt in whole or in part from future assessments under this chapter, during such period as the commission may prescribe, any of the soft tree fruits or any particular strain

or classification of them. [1992 c 87 § 1; 1983 1st ex.s. c 73 § 1; 1977 ex.s. c 8 § 1; 1965 ex.s. c 43 § 1; 1963 c 51 § 4; 1961 c 11 § 15.28.180. Prior: 1947 c 73 § 26; Rem. Supp. 1947 § 2909-35.]

15.28.190 Deposit of funds—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, deposited by him in banks designated by the commission, and disbursed on its order.

The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in the sum of fifty thousand dollars, and conditioned upon his faithful performance of his duties and his strict accounting of all funds of the commission.

None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [1961 c 11 § 15.28.190. Prior: 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909-24, part.]

15.28.200 Use of funds—Contributions. All moneys collected from such levy shall be expended exclusively to effectuate the purposes and objects of this chapter. They shall be generally expended on promotion and improvement of the various commodities approximately in the ratio that funds are derived from such commodities, after deducting suitable amounts for general overhead and basic general research, unless a majority of the functioning state commodity committees consent to a larger expenditure on behalf of any commodity or commodities. Any funds contributed to the commission by any special group or raised by an additional levy on any commodity or classification thereof, shall be expended only in connection with such commodity. [1961 c 11 § 15.28.200. Prior: 1947 c 73 § 19; Rem. Supp. 1947 § 2909-28.]

15.28.210 Records kept—Preservation—Inspection of. Every dealer, handler, and processor shall keep a complete and accurate record of all soft tree fruits handled, shipped, or processed by him. Such record shall be in simple form and contain such information as the commission shall by rule or regulation prescribe. The records shall be preserved by such handler, dealer, and processor for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written request of the commission or its duly authorized agents. [1961 c 11 § 15.28.210. Prior: 1947 c 73 § 20; Rem. Supp. 1947 § 2909-29.]

15.28.220 Returns to commission. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of soft tree fruits handled, shipped, or processed by him during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [1961 c 11 § 15.28.220. Prior: 1947 c 73 § 21; Rem. Supp. 1947 § 2909-30.]

15.28.230 Due date of assessments—Delinquent penalty. All assessments levied and imposed by this chapter shall be due prior to shipment and shall become delinquent if not paid within thirty days after the time established for such payment according to regulations of the commission. A delinquent penalty shall be payable on any such delinquent assessment, calculated as interest on the principal amount due at the rate of ten percent per annum. Any delinquent penalty shall not be charged back against the grower unless he caused such delay in payment of the assessment due. [1961 c 11 § 15.28.230. Prior: 1955 c 47 § 2; 1947 c 73 § 22; Rem. Supp. 1947 § 2909-31.]

15.28.240 Collection rules—Use of "stamps." The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "Washington state fruit commission stamps" to be purchased from the commission and fixed or attached to the container, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Stamps shall be canceled immediately upon being so attached or fixed, and the date of cancellation shall be placed thereon. [1961 c 11 § 15.28.240. Prior: 1947 c 73 § 23; Rem. Supp. 1947 § 2909-32.]

15.28.250 Failure to pay—Duty of dealer, processor. Unless the assessment has been paid by the grower and evidence thereof submitted by him, the dealer, handler, or processor shall be responsible for the payment of all assessments hereunder on all soft tree fruits handled, shipped, or processed by him but he shall charge the same against the grower, who shall be primarily responsible for such payment. [1961 c 11 § 15.28.250. Prior: 1947 c 73 § 24; Rem. Supp. 1947 § 2909-33.]

15.28.260 Publications by commission—Subscriptions. If the commission publishes a bulletin or other publication, or a section in some established trade publication, for the dissemination of information to the soft tree fruit industry in this state, the first two dollars of any assessment paid annually by each grower, handler, dealer, and processor of such fruit shall be applied to the payment of his subscription to such bulletin or publication. [1961 c 11 § 15.28.260. Prior: 1947 c 73 § 27; Rem. Supp. 1947 § 2909-36.]

15.28.270 Violations—Penalty. Every person shall be guilty of a misdemeanor who:

(1) Violates or aids in the violation of any provision of this chapter, or

(2) Violates or aids in the violation of any rule or regulation of the commission. [1961 c 11 § 15.28.270. Prior: 1947 c 73 § 28; Rem. Supp. 1947 § 2909-37.]

15.28.280 Venue of actions—Jurisdiction of courts. Any prosecution brought under this chapter may be instituted or brought in any county in the state in which the defendant

or any of the defendants reside, or in which the violation was committed, or in which the defendant or any of the defendants has his principal place of business.

The several superior courts of the state are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof, or of any rule or regulation promulgated by the commission. [1961 c 11 § 15.28.280. Prior: 1947 c 73 § 29; Rem. Supp. 1947 § 2909-38.]

15.28.290 Duty to enforce. It shall be the duty of all state and county law enforcement officers and all employees and agents of the department to aid in the enforcement of this chapter. [1961 c 11 § 15.28.290. Prior: 1947 c 73 § 30; Rem. Supp. 1947 § 2909-39.]

15.28.300 Rules and regulations—Filing—Publication. Every rule, regulation, or order promulgated by the commission shall be filed with the director, and shall be published in a legal newspaper of general circulation in each of the three districts. All such rules, regulations, or orders shall become effective pursuant to the provisions of RCW 34.05.380. [1985 c 469 § 7; 1975 1st ex.s. c 7 § 38; 1961 c 11 § 15.28.300. Prior: 1947 c 73 § 31; Rem. Supp. 1947 § 2909-40.]

15.28.310 Authority to agents of commission to inspect. Agents of the commission, upon specific written authorization signed by the chairman or secretary-manager thereof, shall have the right to inspect the premises, books, records, documents, and all other instruments of any carrier, railroad, truck, boat, grower, handler, dealer, and processor for the purpose of enforcing this chapter and collecting the assessments levied hereunder. [1961 c 11 § 15.28.310. Prior: 1947 c 73 § 32; Rem. Supp. 1947 § 2909-41.]

15.28.900 Preamble. This chapter is passed:

(1) In the exercise of the police power of the state to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the soft tree fruit industry of the state;

(2) Because the soft tree fruits grown in Washington collectively comprise one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crops and the expanding and protection of the market for them is of public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington soft tree fruits in domestic and foreign markets;

(4) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington soft tree fruits, and to spread that knowledge throughout the world in order to increase the consumption of Washington soft tree fruits;

(5) Because Washington grown soft tree fruits are handicapped by high freight rates in competition with eastern and foreign grown soft tree fruits in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(6) Because the stabilization of the soft tree fruits industry, enlargement of its markets, and the increase of the consumption of soft tree fruits are necessary to assure the payment of taxes to the state and its subdivisions, and to maintain employment and adequate wages for agricultural labor within the state;

(7) Because many new plantings of soft fruit trees are being made and substantially increased new plantings are expected in the near future as additional land comes under irrigation, and since the soft fruit trees mature quickly, it is conceivable that the industry may become unstabilized and demoralized by the excess production unless adequate outlets for the crops are provided, in advance of this anticipated production and it is essential that the program herein outlined be adopted for the purposes herein stated to aid in stabilizing the soft tree fruit industry;

(8) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only soft tree fruits of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer thereof, so that they can pay adequate wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and to educate the wholesale and retail trade with reference to the advantages of establishing and maintaining markups that will result in increasing sales to the consumers with consequent benefits to the people of the state of Washington;

(9) To protect the general public by educating it in reference to the various varieties and grades of Washington soft tree fruits, the time to use and consume each variety, and the uses to which each variety should be put. [1961 c 11 § 15.28.900. Prior: 1947 c 73; No RRS.]

15.28.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.28.910. Prior: 1947 c 73 § 33, part; Rem. Supp. 1947 § 2909-42, part.]

Chapter 15.30
CONTROLLED ATMOSPHERE STORAGE OF FRUITS AND VEGETABLES

Sections

15.30.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society and association and every officer, agent or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Controlled atmosphere storage" means any storage warehouse consisting of one or more rooms, or one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits or vegetables in order that, upon removal, they may be designated as having been exposed to controlled atmosphere. [1961 c 29 § 1.]

15.30.020 Annual license required—Expiration date. It shall be unlawful for any person to engage in the business of operating a controlled atmosphere storage warehouse or warehouses without first obtaining an annual license from the director. Such license shall expire on August 31st of any one year. [1961 c 29 § 2.]

15.30.030 Application for license, contents—Issuance, prerequisites. Application for a license to operate a controlled atmosphere warehouse shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(5) The storage capacity of each controlled atmosphere storage warehouse the applicant intends to operate by cubic capacity or volume.

(6) The kind of fruits or vegetables for which the applicant intends to provide controlled atmosphere storage.

(7) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required license fee. [1961 c 29 § 3.]

15.30.040 Annual license fee. The application for an annual license to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee prescribed by the director by rule. [1988 c 254 § 6; 1961 c 29 § 4.]

15.30.050 Enforcement—Rules authorized, procedure. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purposes. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 29 § 5.]

15.30.060 Oxygen content and period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored, time and temperature requirements. The director shall adopt rules:

(1) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse: PROVIDED, That such maximum amount of oxygen retained shall not exceed five percent when apples are stored in such controlled atmosphere storage warehouse.

(2) Prescribing the period in which the oxygen content shall be reduced to the amount prescribed in subsection (1) of this section: PROVIDED, That such period shall not exceed twenty days when apples are stored in such controlled atmosphere warehouse.

(3) The length of time and the degrees of temperature at which any fruits or vegetables shall be retained in controlled atmosphere storage, before they may be classified as having been stored in controlled atmosphere storage: PROVIDED, That such period shall not be less than ninety days for apples. [1967 c 215 § 1; 1961 c 29 § 6.]

15.30.070 License renewal date—Penalty for late renewal, exception. If an application for renewal of the license provided for in RCW 15.30.020 is not filed prior to September 1st of any one year, a penalty of two dollars and fifty cents shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he has not engaged in the business of operating a controlled atmosphere storage warehouse subsequent to the expiration of his prior license. [1961 c 29 § 7.]

15.30.080 Denial, suspension, revocation of license—Grounds—Hearing required. The director is authorized to deny, suspend or revoke the license provided for in RCW

15.30.020 subsequent to a hearing, in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1961 c 29 § 8.]

15.30.090 Denial, suspension, revocation of license—Hearings subject to Administrative Procedure Act. All hearings for a denial, suspension, or revocation of the license provided for in RCW 15.30.020 shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 45; 1961 c 29 § 9.]

Effective date—1989 c 175: See note following RCW 34.05.010.

15.30.100 Subpoenas—Witnesses and fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents and records, anywhere in the state in any hearing affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1961 c 29 § 10.]

15.30.110 Issuance of warehouse number—Use of letters "CA"—Marking containers with letters and number. The director when issuing a license to an applicant shall include a warehouse number which shall be preceded by the letters "CA". If the applicant in applying for a license includes a request for a specific warehouse number, the director shall issue such number to the applicant if such number has not been issued to a prior applicant. The letters "CA" and the number issued as provided in this section shall be marked in a manner provided by the director on all containers in which fruits or vegetables subject to the provisions of this chapter are placed or packed. [1961 c 29 § 11.]

15.30.120 Licensee to make daily determination of air components—Record, form, contents. The licensee shall make air component determinations as to the percentage of carbon dioxide, oxygen and temperature at least once each day. A record of such determinations shall be kept on a form prescribed by the director for a period of two years and shall include the following:

(1) The name and address of the licensee.

(2) The number of the warehouse and the storage capacity of the warehouse.

(3) The date of sealing of the warehouse.

(4) Date of opening of the warehouse.

(5) A daily record of the date and time of the tests, including the percentage of carbon dioxide, percentage of oxygen and the temperature. [1961 c 29 § 12.]

15.30.130 Identity of fruit and vegetables to be maintained by CA number and inspection number to retail market. The identity of any fruits or vegetables represented as having been stored in a room or warehouse subject to the provisions of this chapter shall be maintained, by the CA number issued to the licensee in whose warehouse such fruits and vegetables were stored and the state lot inspection number issued by the director for such fruits or vegetables, from the time it leaves such warehouse through the various channels of trade and transportation to the retailer. [1961 c 29 § 13.]

15.30.140 Maturity and condition standards may be higher than for fruit and vegetables not subject to chapter. The director may by rule establish condition and maturity standards for fruits or vegetables subject to the provisions of this chapter which may be higher than maturity and condition standards established for similar grades or classifications of such fruits or vegetables which are not subject to the provisions of this chapter. [1961 c 29 § 14.]

15.30.150 Minimum condition and maturity standards for apples. Minimum condition and maturity standards for apples subject to the provisions of this chapter shall be the U.S. condition and maturity standards for export as provided in 7 Code of Federal Regulations 51.317 on February 21, 1961: PROVIDED, That the director may adopt any subsequent amendment to such U.S. condition and maturity standards for export prescribed by the secretary of agriculture of the United States. [1961 c 29 § 15.]

15.30.160 Inspection, certification prior to using "CA" or similar designation—Eradication required, when. No person in this state shall place or stamp the letters "CA" or a similar designation in conjunction with a number or numbers upon any container or subcontainer of any fruits or vegetables, unless the director has inspected such fruits or vegetables and issued a state lot number for such fruits or vegetables in conjunction with a certificate stating their quality and condition, that they were stored in a warehouse licensed under the provisions of this chapter and that they meet all other requirements of this chapter or rules adopted hereunder: PROVIDED, That if such fruits or vegetables are not allowed to enter the channels of commerce within two weeks of such inspection or a subsequent similar inspection by the director the letters "CA" and the state lot number shall be eradicated by the licensee. [1961 c 29 § 16.]

15.30.170 Inspection, certification may be requested by financially interested person. Any person financially interested in any fruits or vegetables subject to the provisions of this chapter may apply to the director for inspection and certification as to whether such fruits or vegetables meet the requirements provided for in this chapter or rules adopted hereunder. [1961 c 29 § 17.]

15.30.180 Fees for inspection and certification. The director shall prescribe the necessary fees to be charged to the licensee or owner for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter or rules adopted hereunder. The fees provided for in this section shall become due and payable by the end of the next business day and if such fees are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: PROVIDED, That the director in such instances may demand and collect inspection and certifica-

tion fees prior to inspecting and certifying any fruits or vegetables for such person. [1961 c 29 § 18.]

15.30.190 Certificate as evidence. Every inspection certificate issued by the director under the provisions of this chapter shall be received in all courts of the state as prima facie evidence of the statement therein. [1961 c 29 § 19.]

15.30.200 Disposition of fees. All moneys collected under the provisions of this chapter for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter shall be handled and deposited in the manner provided for in *chapter 15.16 RCW, as enacted or hereafter amended, for the handling of inspection and certification fees derived for the inspection of any fruits and vegetables. [1961 c 29 § 20.]

***Reviser's note:** Chapter 15.16 RCW was repealed by 1963 c 122. Later enactment, see chapter 15.17 RCW.

15.30.210 Unlawful sales, acts, or use of words "controlled atmosphere storage" and terms of similar import. It shall be unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits or vegetables represented as having been exposed to "controlled atmosphere storage" or to use any such term or form of words or symbols of similar import unless such fruits or vegetables have been stored in controlled atmosphere storage which meets the requirements of this chapter or rules adopted hereunder. [1961 c 29 § 21.]

15.30.220 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1961 c 29 § 22.]

15.30.230 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 29 § 23.]

15.30.240 Prior civil or criminal liability not affected. The enactment of this chapter shall not have the effects of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on February 21, 1961. [1961 c 29 § 24.]

15.30.250 Penalties for violating chapter. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1961 c 29 § 25.]

15.30.260 Cooperation, agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1961 c 29 § 26.]

15.30.900 Fruits and vegetables in storage prior to enactment of chapter. Any fruits or vegetables now in controlled atmosphere storage and removed after February 21, 1961 may be marked, shipped, represented and sold as having been exposed to controlled atmosphere storage if such fruits and vegetables meet the requirements of this chapter and the rules and regulations adopted hereunder. [1961 c 29 § 28.]

15.30.910 Severability—1961 c 29. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1961 c 29 § 27.]

Chapter 15.32
DAIRIES AND DAIRY PRODUCTS

Sections

Butter, milk, etc., containers, packages, etc.: Chapter 19.94 RCW.

Food donated to nonprofit organizations: Chapter 69.80 RCW.

15.32.010 Definitions. For the purpose of chapter 15.32 RCW:

"Supervisor" means the supervisor of the dairy and food division;

"Dairy" means a place where milk from one or more cows or goats is produced for sale;

"Creamery" means a structure wherein milk or cream is manufactured into butter for sale;

"Milk plant" means a structure wherein milk is bottled, pasteurized, clarified, or otherwise processed;

"Cheese factory" means a structure where milk is manufactured into cheese;

"Factory of milk products" means a structure, other than a creamery, milk plant, cheese factory, milk condensing plant or ice cream factory, where milk or any of its products is manufactured, changed, or compounded into another article, or where butter is cut or wrapped; except freezing of ice cream from a mix compounded in a licensed creamery, milk plant, cheese factory, milk condensing plant or ice cream factory;

"Milk condensing plant" means a structure where milk is condensed or evaporated;

"Ice cream factory" means a structure which complies with the sanitary requirements of RCW 15.32.080, where ice cream mix is produced for sale or distribution, and may include freezing such mix into ice cream;

"Counter ice cream freezer" means counter type freezing machines usually operated in retail establishments;

"Sterilized milk" means milk that has been heated under six pounds of steam pressure and maintained thereat for not less than twenty minutes;

"Modified milk" means milk that has been altered in composition to conform to special nutritional requirements;

"Milk product" means an article manufactured or compounded from milk, whether or not the milk conforms to the standards and definitions herein;

"Milk byproduct" means a product of milk derived or made therefrom after the removal of the milk fat or milk solids in the process of making butter or cheese, and includes skimmed milk, buttermilk, whey, casein, and milk powder;

"Butter" means the product made by gathering the fat of pasteurized milk or cream into a mass containing not less than eighty percent of milk fat, and which also contains a small portion of other milk constituents, with or without harmless coloring matter;

"Renovated butter" means butter that has been reduced to a liquid state by melting and drawing off the liquid or butter oil, and has thereafter been churned or manipulated in connection with milk, cream, or other product of milk;

"Reworked butter" means the product obtained by mixing or rechurning butter made on different dates or at different places: PROVIDED, That the mixing of remnants from one day's churning or cutting with butter from the churning of the same creamery on the next day shall not make the product reworked butter;

"Butter substitute" means a compound of vegetable oils with milk fats or milk solids and all compounds of milk fats or milk solids with butter when the compound contains less than eighty percent of milk fat;

"Oleomargarine" means all manufactured substances, extracts, mixtures, or compounds, including mixtures or compounds with butter, known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral, and includes all lard and tallow extracts and mixtures and compounds of tallow, beef fat, suet, lard, lard oil, intestinal fat and offal fat made in imitation or semblance of butter or calculated or intended to be sold as butter;

"Cheese" means any of the cheeses as described in Title 21 of the code of federal regulations part 133;

"Imitation cheese" means any article, substance, or compound, other than that produced from pure milk or from the cream from pure milk, which is made in the semblance of cheese and designed to be sold or used as a substitute for cheese. The use of salt, lactic acid, or pepsin, and harmless coloring matter in cheese shall not render the true product an imitation. Nothing herein shall prevent the use of pure skimmed milk in the manufacture of cheese;

"Milk vendor" or "milk dealer" means any person who sells, furnishes or delivers milk, skimmed milk, buttermilk, or cream in any manner.

All dairy products mentioned in this chapter mean those fit or used for human consumption. [1989 c 354 § 1; 1961 c 11 § 15.32.010. Prior: 1955 c 238 § 71; prior: (i) 1943 c 90 § 1, part; 1933 c 188 § 1, part; 1929 c 213 § 1, part; 1927 c 192 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part. (ii) 1929 c 213 § 6, part; 1927 c 192 § 16, part; 1921 c 104 § 3, part; 1919 c 192 § 41, part; RRS § 6203, part.]

Severability—1989 c 354: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 354 § 89.]

15.32.051 Definitions and standards—Rules. The director may, by rule, establish and/or amend definitions and standards for dairy products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for dairy products promulgated by the secretary of the United States department of health, education and welfare: PROVIDED, That the

director shall at all times provide reasonable standards for ice milk.

The director may adopt any other rules necessary to carry out the purposes of this chapter. The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules, except as otherwise provided in this section. [1989 c 354 § 2; 1963 c 58 § 2.]

Severability—1989 c 354: See note following RCW 15.32.010.

Adoption of rules as to imitation of dairy products: RCW 15.36.011.

15.32.060 Insanitary dairies, when. A dairy is deemed insanitary when:

(1) The drinking water for cows or goats is stagnant or polluted; or

(2) The yards are filthy or insanitary, or are the depositaries of manure which is allowed to decay or ferment; or

(3) The barn or stable is not provided with suitable floors, gutters and drains, or are not properly sealed from the feed storage; or the interior thereof has not had a coat of lime, whitewash, or paint at least once each year; or at least three square feet of window light is not provided for each cow; or

(4) The milk room provided for cooling, mixing, bottling, canning, separating, or keeping milk, is used for any other purpose; or is not screened against flies or insects; or is located in a dwelling house, barn, or poultry house; or if located in a building where a business, occupation, or trade other than handling, bottling, or processing milk is conducted it is not separated therefrom by a sealed or plastered partition; or has a door leading directly into a barn where cows are kept or milked, except that double doors and a vestibule between is permitted in lieu of an outside door; or is used by a person as living or sleeping quarters; or is occupied by animals or fowl of any kind; or if a drainage system adequate to carry drainage one hundred feet away is not provided; or it is not provided with a floor of concrete or other equally impervious material; or the walls and ceiling are not finished with a smooth surface which must be covered once a year with a coat of lime whitewash or paint; or the walls or floor of the milk room become soiled with manure, urine, dirt or other filth;

(5) Any urinal, privy vault, open cesspool, pig pen, stagnant water, manure accumulation, or other filth is permitted within one hundred feet of any milk room, or within fifty feet of any place where milking is done, except that modern, flush-type toilets are permitted adjacent to milk rooms or barns if they are located in separate, properly ventilated and sealed rooms which do not open into any room where milk is handled;

(6) The person or wearing apparel of any person who comes in contact with milk or milk products becomes soiled or is not washed with reasonable frequency;

(7) Milking stools are not kept clean;

(8) Milking machines or other equipment of any kind which comes in contact with milk, is not thoroughly cleansed and sterilized in the milk room, with boiling water, live steam, or an approved chemical method, after every use thereof; or if the same becomes rusty or insanitary;

(9) The floor of any barn, shed, or stable in which cows or goats are kept or milked, or of a milk room, is so constructed or in such condition as to permit liquids to flow or soak underneath the floor, or among the interstices thereof in such a manner as to cause decay or fermentation to take place; or

(10) If the milk room is not provided with suitable windows or openings permitting the entrance of light and air from the outside of the building without passing through any other portion thereof;

(11) When there is permitted to exist any other cause or thing calculated or tending to render the milk or its products unclean, impure and unhealthy. [1961 c 11 § 15.32.060. Prior: (i) 1943 c 90 § 2, part; 1929 c 213 § 2, part; 1927 c 192 § 2, part; 1919 c 192 § 2, part; Rem. Supp. 1943 § 6165, part. (ii) 1927 c 192 § 20; 1919 c 192 § 73; RRS § 6235.]

15.32.070 Closing of insanitary dairies. Whenever any dairy becomes insanitary within the meaning of RCW 15.32.060 it may be closed until such time as the condition is remedied, and it is unlawful to sell milk or milk products from any closed or insanitary dairy. [1961 c 11 § 15.32.070. Prior: 1943 c 90 § 2, part; 1929 c 213 § 2, part; 1927 c 192 § 2, part; 1919 c 192 § 2, part; Rem. Supp. 1943 § 6165, part.]

15.32.080 Insanitary milk plants. A structure or place where milk or cream is processed or manufactured into other products, or where handled, stored, or kept for sale shall be deemed insanitary in the following circumstances:

(1) If milk or cream is received or kept which has deteriorated in quality;

(2) If utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and sanitized after each using;

(3) If the floor is such as to permit liquids to soak into the floor's interstices, or such as may not be readily kept free from dirt and filth;

(4) If drains are not provided that will convey refuse milk and water to a point at least fifty yards distant;

(5) If a cesspool, privy vault, hog yard, slaughterhouse, henhouse, manure, or decaying vegetable or animal matter that will produce foul odors is permitted to exist within such distance as will permit the odors therefrom to reach such place;

(6) If it lacks sufficient light and air to secure good ventilation;

(7) If in a building used in connection therewith any insects, vermin, or other species of animal life are permitted;

(8) If upon the floor or walls thereof, any milk or its products or any other filth is allowed to accumulate;

(9) If the person or clothing of a person coming in contact with milk or milk products therein is unclean;

(10) If there is permitted to exist any other cause or thing tending to render the milk or its products produced, kept, handled, or manufactured therein unclean, impure, and unhealthy. [1989 c 354 § 3; 1961 c 11 § 15.32.080. Prior: 1923 c 27 § 1; 1919 c 192 § 3; RRS § 6166.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.090 Duties of the director. The director shall:

(1) Enforce all laws relating to the production or manufacture, sale or distribution of milk and milk products, and cause to be prosecuted persons suspected of violations thereof. The attorney general, and prosecuting attorney of any county shall, upon request of the director, render him legal assistance in performing such duties;

(2) Adopt and promulgate rules and regulations for the issuance of licenses required of persons who handle milk or milk products; for hearing complaints against such licensees; and the revocation of such licenses;

(3) Inspect all structures and places where milk or milk products are produced, manufactured, processed, stored, or sold, and all vehicles used in the transportation thereof, and all apparatus used in testing or grading milk or cream, and conduct revisory tests when there is reason to believe that milk or cream for sale, is not being accurately tested, graded, measured, or weighed. Defective apparatus shall be condemned;

(4) Inspect any milk or milk products, and imitations thereof, which he may suspect of being impure, adulterated, or counterfeit, and prosecute any persons engaged in the manufacture or sale of such products in violation of law.

Said duties may be performed by the director, or supervisor or any inspector of the department. [1961 c 11 § 15.32.090. Prior: (i) 1919 c 192 § 34; RRS § 6196. (ii) 1919 c 192 § 35; RRS § 6197. (iii) 1919 c 192 § 36; RRS § 6198. (iv) 1927 c 192 § 13; 1919 c 192 § 37; RRS § 6199. (v) 1927 c 192 § 14; 1919 c 192 § 38; RRS § 6200. (vi) 1927 c 192 § 15, part; 1919 c 192 § 39, part; RRS § 6201, part. (vii) 1919 c 192 § 75; RRS § 6237. (viii) 1919 c 192 § 81; RRS § 6243. (ix) 1899 c 43 § 10; 1895 c 45 § 10; RRS § 6255.]

15.32.100 Milk vendor's license. Every person who sells, offers or exposes for sale, barters, or exchanges any milk or milk product as defined by rule under chapter 15.36 RCW must have a milk vendor's license to do so. The license shall not include retail stores or restaurants that purchase milk prepackaged or bottled elsewhere for sale at retail or establishments that sell milk only for consumption in such establishment. Such license, issued by the director on application and payment of a fee of ten dollars, shall contain the license number, and name, residence and place of business, if any, of the licensee. It shall be nontransferable, shall expire annually on a date set by rule by the director, and may be revoked by the director, upon reasonable notice to the licensee, for any violation of or failure to comply with any provision of this chapter or any rule or regulation, or order of the department, or any officer or inspector thereof. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 1; 1989 c 354 § 4; 1983 c 3 § 20; 1963 c 58 § 3; 1961 c 11 § 15.32.100. Prior: (i) 1929 c 213 § 5; 1927 c 192 § 12; 1919 c 192 § 31; 1899 c 43 § 25; RRS § 6193. (ii) 1923 c 27 § 9; 1919 c 192 § 32; 1899 c 43 § 25; RRS § 6194.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.110 Plant licenses—Generally. Every creamery, milk plant, shipping station, milk-condensing plant, factory of milk products, and other person who receives or purchases milk or cream in bulk and by weight or measure or upon the basis of milk fat contained therein shall obtain annually a license to do so. The license shall be issued by the director upon payment of ten dollars and his being satisfied that the building or premises where the milk or cream is to be received is maintained in a sanitary condition in accordance with the provisions of this chapter; except, such license shall not be required of persons purchasing milk or cream for their own consumption nor of hotels, restaurants, boarding houses, eating houses, bakeries, or candy manufacturing plants.

The license shall expire annually on a date set by rule by the director, unless sooner revoked by the director, upon reasonable notice to the licensee, for a failure to comply with the provisions of this chapter, and the rules and regulations issued hereunder. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

A licensee under this section shall not be required to obtain a milk vendor's license. [1991 c 109 § 2; 1961 c 11 § 15.32.110. Prior: (i) 1927 c 192 § 11; 1923 c 27 § 8; 1919 c 192 § 29; RRS § 6192. (ii) 1919 c 192 § 33; RRS § 6195.]

15.32.120 Adulteration of milk and milk products. Adulterated within the meaning of this chapter means:

(1) Milk, skimmed milk, buttermilk or cream which has been reduced, altered or changed in any respect by the addition of water or other substance: PROVIDED, That no milk, skimmed milk, buttermilk or cream shall be deemed to be adulterated if such milk, skimmed milk, buttermilk or cream contains any added ingredient or substance in the amount and kind prescribed or allowed by a rule or regulation promulgated by the director subsequent to a public hearing pursuant to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended; and

(2) Milk and milk products which do not conform to the definitions and standards set forth in *RCW 15.32.010 through 15.32.050. [1969 ex.s. c 102 § 5; 1961 c 11 § 15.32.120. Prior: (i) 1919 c 192 § 67; RRS § 6229. (ii) 1919 c 192 § 69; RRS § 6231.]

***Reviser's note:** RCW 15.32.020 through 15.32.050 were repealed by 1963 c 58 § 1.

15.32.130 Unlawful sales and service of milk, milk products. No person shall:

(1) Serve as milk, cream or a milk product for human consumption any substance which is adulterated within the meaning of this chapter; nor

(2) Serve for human consumption in any place where meals are served, either as part of a meal or otherwise, ice cream, nut ice cream, fruit ice cream, ice milk or any substance resembling ice cream or ice milk, which is adulterated within the meaning of this chapter; nor

(3) Sell or offer for sale butter, cheese, or condensed milk which is adulterated within the meaning of this chapter; except that milk from cows which have reacted to tuberculin tests but exhibit no physical symptoms of disease, may be used to make butter, cheese, or condensed milk if such milk

has been pasteurized or sterilized as required by the provisions of this chapter and a permit to do so has been issued by the director or departmental inspector; nor

(4) Add to any milk, cream, or condensed milk any gelatine, gum or other substance for the purpose of increasing the apparent richness thereof; except that nothing in this chapter shall be construed as prohibiting the use of harmless coloring matter and common salt in making butter or cheese, or harmless coloring or flavoring matter in ice cream or ice milk, or rennet, lactic acid or pepsin in making cheese. [1961 c 11 § 15.32.130. Prior: (i) 1919 c 192 § 47; RRS § 6209. (ii) 1919 c 192 § 58; RRS § 6220. (iii) 1919 c 192 § 62; RRS § 6224. (iv) 1919 c 192 § 66; 1907 c 211 § 1; 1905 c 50 § 1; 1901 c 94 § 1; RRS § 6228. (v) 1919 c 192 § 68; RRS § 6230.]

15.32.140 Impure milk and cream. Milk or sweet cream which is not free from foreign substances, coloring matter, or preservatives, which has been infected by or exposed to any contagious or infectious disease in the finished product, shall be deemed impure, unwholesome, and adulterated. [1989 c 354 § 5; 1961 c 11 § 15.32.140. Prior: 1929 c 213 § 12; 1927 c 192 § 19; 1919 c 192 § 70; RRS § 6232.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.150 Sale of adulterated or impure products prohibited. It is unlawful to manufacture, sell, offer for sale, or deliver any unclean, impure, or adulterated milk or milk product or any product prepared therefrom. Milk, cream, or milk products when unfit for human consumption may be condemned, destroyed, or rendered unusable for human consumption. [1961 c 11 § 15.32.150. Prior: 1929 c 213 § 8; 1923 c 27 § 10; 1919 c 192 § 48; RRS § 6210.]

15.32.160 Sale of products from diseased animals prohibited—Exception. It is unlawful to sell, offer for sale, or deliver:

(1) Milk or products produced from milk from cows or goats affected with disease or of which the owner thereof has refused official examination and tests for disease: or

(2) Colostrum milk, meaning that produced within ten days before or seven days after parturition, except that colostrum milk from cows that have been tested for brucellosis within sixty days of parturition may be made available to persons having multiple sclerosis, or other persons acting on their behalf, who, at the time of the initial sale, present a form, signed by a licensed physician, certifying that the intended user has multiple sclerosis and that the user releases the provider of the milk from liability resulting from the consumption of the milk. Colostrum milk provided under this section is exempt from meeting the standards for grade A raw milk required by chapter 15.36 RCW.

(3) The department of agriculture shall adopt rules to carry out this section. The rules shall include but not be limited to establishing standards requiring hyper-immunization. [1981 c 321 § 1; 1961 c 11 § 15.32.160. Prior: 1929 c 213 § 9; 1919 c 192 § 49; RRS § 6211.]

15.32.220 Milk container labeling. All milk container labeling shall conform with the federal fair packaging and labeling act. [1989 c 354 § 6; 1961 c 11 § 15.32.220. Prior: (i) 1929 c 213 § 17; 1911 c 39 § 1; RRS § 6282. (ii) 1911 c 39 § 2; RRS § 6283. (iii) 1911 c 39 § 3; RRS § 6284.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.250 Protection against flies, filth. No milk or milk product may be offered for sale unless it is kept properly protected from flies, dust, dirt, or other injurious contamination. [1961 c 11 § 15.32.250. Prior: 1919 c 192 § 4; RRS § 6167.]

15.32.260 Sanitary handling of shipments. Milk and milk products when being transported shall be kept in a sanitary condition, and shall not be exposed to contamination or allowed to remain where it or its container is exposed to the direct rays of the sun. [1961 c 11 § 15.32.260. Prior: 1919 c 192 § 7; RRS § 6170.]

15.32.330 Butter labeling—Violation, misdemeanor. Prints of butter in sizes of two pounds or less shall not be sold unless they are plainly labeled with the name or official number of the manufacturer, jobber or retailer thereof. Persons who violate this section shall be guilty of a misdemeanor. Possession of butter with intent to sell not so wrapped and labeled is prima facie evidence of guilt. [1961 c 11 § 15.32.330. Prior: 1933 c 188 § 5; RRS § 6225-1.]

15.32.340 Butter, milk, substitutes—Use of names restricted. No person shall use the words "butter," "creamery," "dairy" or "butterine," or any picture or representation of a cow, in any advertisement, sign or card relating to or in connection with the sale, serving or furnishing of oleomargarine or other substance designed as a substitute for or an imitation of butter, or of milk from which the milk fat has been removed and vegetable or other oil substituted therefor. [1961 c 11 § 15.32.340. Prior: 1919 c 192 § 45; RRS § 6207.]

15.32.360 "Renovated butter"—Regulations—Penalty. No person shall sell, offer for sale, or possess with intent to sell any process butter unless the words "renovated butter" are marked in ink on the side of the package in capital letters one inch high and one-half inch wide. No retailer shall sell process butter unless a card bearing the words "renovated butter" is displayed on the package from which he is selling so that it may be easily read.

Whoever violates the provisions of this section is guilty of a misdemeanor and shall be fined for each offense not less than twenty-five nor more than one hundred dollars, or imprisoned for not less than one nor more than six months, or by both fine and imprisonment. [1961 c 11 § 15.32.360. Prior: 1899 c 43 § 30; RRS § 6251.]

15.32.380 "Washington creamery butter," "reworked butter"—Use of. No person shall:

(1) Use the words "Washington creamery butter" as a brand, emblem or trademark upon any butter, or imitation thereof, or substance resembling butter, or upon any container of any such product; or

(2) Sell, offer for sale or possess with intent to sell reworked butter unless on the side of the package is marked with ink the words "reworked butter" in capital letters one inch high and one-half inch wide. [1961 c 11 § 15.32.380. Prior: 1921 c 104 § 5; 1919 c 192 § 63; 1899 c 43 §§ 29, 30; RRS § 6225.]

15.32.410 Pasteurization only at butter and cheese plant. All milk or cream used in the manufacture of pasteurized butter or cheese shall be pasteurized only in the plant where the butter or cheese is manufactured. [1961 c 11 § 15.32.410. Prior: 1919 c 192 § 12; RRS § 6175.]

15.32.420 "Pasteurized"—Use of word regulated. No person shall use the word "pasteurized" in connection with the sale, designation, advertising, labeling, or billing of milk, cream, or any milk product unless the same and all milk products used in the manufacture thereof consist exclusively of milk, skimmed milk, or cream that has been pasteurized in its final form. [1989 c 354 § 7; 1961 c 11 § 15.32.420. Prior: 1919 c 192 § 71; RRS § 6233.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.430 Cattle breed name—Use in trade—Penalty. No person shall without permission, use in his corporate, firm, or trade name, brand, or advertising, the name of any breed of dairy cattle unless the milk sold, offered for sale, or advertised, is produced entirely from a herd, each cow of which possesses more than fifty percent of the blood of the breed of cattle so named: PROVIDED, That milk solids, as defined by the department of agriculture, added to nonfat milk, skim milk, and low-fat milk as defined by the department of agriculture shall not be subject to such breed requirements.

Any person desiring to use the name of a breed of dairy cattle in connection with the sale of his milk shall make application to the supervisor so to do, and upon a sufficient showing the supervisor may grant permission.

Any person violating this section shall be punished by a fine of not less than twenty-five dollars for the first offense and not less than fifty nor more than one hundred dollars for each subsequent offense. [1973 c 31 § 1; 1961 c 11 § 15.32.430. Prior: (i) 1933 c 23 § 1; RRS § 6260-1. (ii) 1933 c 23 § 2; RRS § 6260-2. (iii) 1933 c 23 § 3; RRS § 6260-3.]

15.32.440 Brands—Registration—Fee—Use. A person engaged in the manufacture, sale, or distribution of milk or milk products may adopt a brand of ownership which may consist of a name, design, or mark, and may upon the payment of a fee of fifteen dollars, file with the director an application for the exclusive right to the use thereof. The application shall contain the name and address of the applicant, a description of the brand proposed and the use to be made thereof. The director shall refuse the application if the brand is the same or so nearly similar to any brand theretofore registered, as to be misleading. Otherwise the application shall be granted and such fact, together with a description of the brand, shall be entered in a register to be kept by the director. A brand must be stamped, embossed or affixed by means of a metal plate on each container, or in the case of wooden containers must be burned therein. Upon the sale of a container the brand thereon shall become void. [1961 c 11 § 15.32.440. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 2; RRS § 6260.]

15.32.450 Brands, branded containers—Unlawful use of—Seizure authorized. It shall be unlawful for a person other than the registered owner thereof, to possess for sale, barter, or use such a branded container, and possession by any junk dealer or vendor shall be prima facie evidence of possession for sale, barter, or use. When a branded container is in the possession of a person other than the registered owner, the director may seize and hold it until it is established to his satisfaction that such possession is lawful. No person, other than the owner, shall deface or remove a brand, or adopt a registered brand of another, or use a branded container, except to transport dairy products to and from the owner of the container. [1961 c 11 § 15.32.450. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 3; RRS § 6261. (iii) 1927 c 192 § 22a; 1915 c 101 § 4; RRS § 6262. (iv) 1927 c 192 § 22b; 1915 c 101 § 5; RRS § 6263.]

15.32.460 Branded containers—Return—Expense. Any person receiving dairy products in containers bearing registered brands shall return them to the rightful owners. The inspectors shall seize branded containers not rightfully used and return them to the person in whose name they are registered. Any expense in transporting seized containers shall be paid by the owner. Neither the director nor any person who returns such containers shall be liable for any lost in transportation. [1961 c 11 § 15.32.460. Prior: 1927 c 192 § 23; 1919 c 192 § 87; 1915 c 101 § 6; RRS § 6264.]

15.32.490 "Imitation cheese" branded. Every person who manufactures an imitation of or substitute for cheese shall, before it is removed from his factory distinctly and durably brand it with the words "imitation cheese," and on every container thereof print his name and address in plain, uncondensed gothic letters not less than one inch high in such manner that they cannot be readily obliterated. [1961 c 11 § 15.32.490. Prior: 1919 c 192 § 46, part; RRS § 6208, part.]

15.32.500 Unbranded cheese—Violation of chapter. Failure to brand products as required in RCW 15.32.490, and the offering for sale, selling, or otherwise disposing of such products when unbranded, shall constitute violations of this chapter. Selling such unbranded products constitutes knowledge on the part of the seller that the same is not full cream cheese. [1989 c 354 § 8; 1961 c 11 § 15.32.500. Prior: (i) 1919 c 192 § 46, part; RRS § 6208, part. (ii) 1927 c 192 § 17, part; 1919 c 192 § 64, part; 1897 c 15 § 2, part; 1895 c 45 § 3, part; RRS § 6226, part. (iii) 1927 c 192 § 18; 1919 c 192 § 65; RRS § 6227.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.510 Inspectors—Appointment—Qualifications—Powers. The director may appoint one or more inspectors of milk, dairies, and dairy products, who are graduates of a recognized dairy school, or have completed a college course in dairying. In the absence of completion of a dairy course, the director may review a candidate's qualifications and determine eligibility.

The inspectors may enter any place where milk and its products are stored and kept for sale and any conveyance used to transport milk or cream, and take samples for analysis. [1989 c 354 § 9; 1961 c 11 § 15.32.510. Prior: (i) 1929 c 213 § 13; 1907 c 234 § 1; RRS § 6267. (ii) 1929 c 213 § 14; 1907 c 234 § 2; RRS § 6268.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.520 Milk analysis. A bacteriologist or chemist employed by a certified laboratory may analyze milk for standard of quality, adulteration, contamination, and unwholesomeness, and his analysis shall have the same effect as one made by a chemist of a state institution. [1989 c 354 § 10; 1961 c 11 § 15.32.520. Prior: 1907 c 234 § 14; RRS § 6280.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.530 Milk analysis—Report of result. An inspector who obtains a sample of milk for analysis, shall within ten days after obtaining the result of the analysis, send the result to the person from whom the sample was taken or to the person responsible for the condition of the milk. [1989 c 354 § 11; 1961 c 11 § 15.32.530. Prior: 1907 c 234 § 12; RRS § 6278.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.540 Prerequisite to prosecution for quality. A person is not liable to prosecution because the milk produced by him is not of good standard quality unless the milk was taken upon his premises or while in his possession or under his control by an inspector or his agent and a sealed sample thereof given to him. [1961 c 11 § 15.32.540. Prior: 1907 c 234 § 11; RRS § 6277.]

15.32.550 Imitation seal, altering samples, violations—Penalty. Any person who makes or causes to be made, or uses or possesses, an imitation of a seal used by a person engaged in the inspection of milk, or who alters or tampers with a sample of milk or milk products taken or sealed by an inspector, shall be punished by a fine of one hundred dollars or imprisonment for not less than three nor more than six months. [1961 c 11 § 15.32.550. Prior: 1907 c 234 § 9; RRS § 6275.]

15.32.560 Connivance by inspector or agent—Penalty. An inspector or his agent who wilfully connives at or assents to a violation of any provision of RCW 15.32.510 to 15.32.550, inclusive, or a person who interferes with an inspector or his agent in the performance of his duties, shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment for not less than thirty nor more than sixty days. [1961 c 11 § 15.32.560. Prior: 1907 c 234 § 10; RRS § 6276.]

15.32.570 Quarantine area, removal of containers restricted. No person shall remove from a place under quarantine a container which has been or is to be used to contain milk, skimmed milk, buttermilk, cream, ice cream, or ice milk, without permission of the director. [1989 c 354 § 12; 1961 c 11 § 15.32.570. Prior: 1919 c 192 § 56; RRS § 6218.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.32.580 Dairy technician's license—Required of testers, samplers, graders, and pasteurizers—Examinations. Any person who tests milk or cream or the fluid derivatives thereof, purchased, received, or sold on the basis of milk fat, nonfat milk solids, or other components contained therein, or who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized must hold a dairy technician's license. Such license shall be limited to those functions which the licensee has been found qualified by examination to perform. Before issuing the license the director shall examine the applicant as to his qualifications for the functions for which application has been made. [1963 c 58 § 6; 1961 c 11 § 15.32.580. Prior: 1943 c 90 § 4; 1927 c 192 § 8; 1923 c 27 § 7; 1919 c 192 § 26; Rem. Supp. 1943 § 6189.]

15.32.582 Dairy technician's license—Application for license—Temporary permits. Application for a license as a dairy technician to perform one or more of the functions of a tester, sampler, weigher, grader, or pasteurizer shall be made upon forms to be provided and furnished by the director, and shall be filed with the department. The director may issue a temporary permit to the applicant to perform one or more of the functions of a tester, sampler, weigher, grader, or pasteurizer for such period as may be prescribed and stated in said permit, not to exceed sixty days, but such permit shall not be renewed so as to extend the period beyond sixty days. [1963 c 58 § 7; 1961 c 11 § 15.32.582. Prior: 1943 c 90 § 5; 1927 c 192 § 9; 1919 c 192 § 27; Rem. Supp. 1943 § 6190.]

15.32.584 Dairy technician's license—Generally. The initial application for a dairy technician's license shall be accompanied by the payment of a license fee of ten dollars. Where such license is renewed and it is not necessary that an examination be given the fee for renewal of the license shall be five dollars. All dairy technicians' licenses shall expire biennially on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. The director is authorized to deny, suspend, or revoke any dairy technician's license subject to a hearing if the licensee has failed to comply with the provisions of this chapter, or has exhibited in the discharge of his functions any gross carelessness or lack of qualification, or has failed to comply with the rules and regulations adopted under authority of this chapter. All hearings for the suspension, denial, or revocation of such license shall be subject to the provisions of

chapter 34.05 RCW concerning adjudicative proceedings. [1991 c 109 § 3; 1989 c 175 § 46; 1963 c 58 § 8; 1961 c 11 § 15.32.584. Prior: 1943 c 90 § 6; 1927 c 192 § 10; 1919 c 192 § 28; Rem. Supp. 1943 § 6191.]

Effective date—1989 c 175: See note following RCW 34.05.010.

15.32.590 Activities of licensed dairy technicians—Records—Inspection of. Licensed dairy technicians shall personally take all samples, conduct all tests, and determine all weights and grades of milk or cream bought, sold, or delivered upon the basis of weight or grade or on the basis of the milk fat, nonfat milk solids, or other components contained therein. Each licensee shall keep a carbon copy of every original report of each test, weight, or grade made by him for a period of two months after making same, in a locked container, but subject to inspection at all times by the director or his agent. [1963 c 58 § 9; 1961 c 11 § 15.32.590. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part.]

Penalty for violation of this section: RCW 15.32.610.

15.32.600 Dairy technicians—Personal responsibility. Each dairy technician shall be personally responsible to any person injured through his careless, negligent, or unskillful operation, or any fraudulent, intentionally inaccurate, or manipulated report. [1963 c 58 § 10; 1961 c 11 § 15.32.600. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part.]

15.32.610 Employment of unlicensed person as dairy technician—Offenses concerning examination of reports—Penalty. No person shall employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician; or refuse to allow or fail to assist the director or his agent in the examination of the reports referred to in RCW 15.32.590.

Whoever violates the provisions of this section or RCW 15.32.590 may be fined not less than twenty-five nor more than one hundred dollars, and his license hereunder revoked. [1963 c 58 § 11; 1961 c 11 § 15.32.610. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188.]

15.32.620 Sample taking—Thorough mixing—Unfair samples. Before taking a sample of milk or cream for testing, weighing or grading the licensee shall thoroughly mix the shipment to be sampled until it is of uniform consistency. The shipment of each individual shall be treated separately, and a sample shall be taken from each container in the shipment.

No unfair, fraudulent or manipulated sample shall be taken or returned. [1961 c 11 § 15.32.620. Prior: (i) 1927 c 192 § 5; 1919 c 192 § 21; RRS § 6184. (ii) 1929 c 213 § 4; 1919 c 192 § 23; RRS § 6186.]

15.32.630 Adoption of rules relating to analysis of milk or cream or fluid derivatives thereof. The director may, by rule, establish and/or amend methods, procedures, equipment, and standards to be used and followed in the grading, sampling, weighing, measuring, or testing of milk or cream or the fluid derivatives thereof when the results of such functions are to be used as the basis of payment for milk or cream or the fluid derivatives thereof. Such methods, procedures, equipment, and standards shall conform insofar as practicable with the methods, procedures, equipment, and standards in the latest edition of "Standard Methods for the Analysis of Dairy Products" recommended by the American public health association: PROVIDED, That nothing contained in this section shall be construed as prohibiting any other methods, procedures, equipment, or standards which have been demonstrated to be accurate and efficient and have been approved by the director.

The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules. [1963 c 58 § 12; 1961 c 11 § 15.32.630. Prior: 1927 c 192 § 4; 1919 c 192 § 17; RRS § 6180.]

15.32.660 Inspection, testing, by director, supervisor, inspectors. All duties and powers of inspection and testing conferred or directed by this chapter may be exercised by the director, supervisor, or an inspector of the department. [1961 c 11 § 15.32.660. Prior: 1927 c 192 § 15, part; 1919 c 192 § 39, part; RRS § 6201, part.]

15.32.670 Right of entry—Samples—Duplicate to owner. The director and his deputies may enter any place or building where he has reason to believe that a dairy product or imitation thereof is kept, made, sold, or offered for sale, and open any receptacle containing or supposed to contain any such article, and examine the contents thereof and he may take the article or a sample thereof for analysis. If the person from whom the sample is taken requests him to do so, he shall at the same time and in his presence seal up two samples of the article taken, one of which shall be for examination or analysis, and the other shall be delivered to the person from whom the article is taken. [1961 c 11 § 15.32.670. Prior: 1899 c 43 § 12; 1895 c 45 § 13; RRS § 6257.]

15.32.680 Possession of prohibited article as evidence. Possession of an article the sale of which is prohibited by this chapter shall be prima facie evidence that it is kept in violation of the provisions hereof, and the director may seize and take possession of it, and upon an order of court, he shall sell it for any purpose other than human food. [1961 c 11 § 15.32.680. Prior: 1899 c 43 § 28; RRS § 6250.]

15.32.700 Mutilation of brands, etc., prohibited. No person shall mutilate or remove any mark, brand, label, or other designation required by this chapter from any product, with intent to deceive or in violation of any provision hereof. [1961 c 11 § 15.32.700. Prior: 1919 c 192 § 72; RRS § 6234.]

15.32.710 License fee, sale proceeds—Monthly remittance. All moneys received for licenses or from the sale of articles confiscated under this chapter shall be paid on the first of each month to the state treasurer to be placed

in the general fund. [1961 c 11 § 15.32.710. Prior: 1899 c 43 § 27; RRS § 6249.]

15.32.720 Fines—Distribution—Remittance of district court fees, fines, penalties and forfeitures. One-half of all fines collected from prosecutions under this chapter shall be paid to the state and the remainder to the county in which the conviction is had: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 173; 1969 ex.s. c 199 § 12; 1961 c 11 § 15.32.720. Prior: 1919 c 192 § 82; RRS § 6244.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.32.730 Unlawful interference with official. It shall be unlawful to interfere with or obstruct any person in the performance of his official duties under this chapter. [1961 c 11 § 15.32.730. Prior: 1919 c 192 § 76; RRS § 6238.]

15.32.740 Unlawful conduct, what constitutes—Penalty. The doing of any act prohibited or the failure to do any act required by this chapter or any rule or regulation issued hereunder, when not otherwise provided, shall constitute a misdemeanor. [1961 c 11 § 15.32.740. Prior: (i) 1919 c 192 § 43; RRS § 6205. (ii) 1919 c 192 § 77; RRS § 6239. (iii) 1915 c 101 § 7; RRS § 6265.]

15.32.750 Duty of prosecuting attorney. At the request of the director or his representative, the prosecuting attorney shall prosecute all criminal actions under this chapter within his county. [1961 c 11 § 15.32.750. Prior: 1919 c 192 § 78; RRS § 6240.]

15.32.755 Injunctions authorized—Venue. The director may bring an action to enjoin the violation of any provision of this chapter or rules adopted hereunder in the superior court of the county in which the defendant resides or maintains his principal place of business, notwithstanding the existence of any other remedy at law. [1963 c 58 § 14.]

15.32.760 Carrier employees to aid director—Violation, penalty. Every employee of a common carrier shall render to the director and his authorized representatives all possible assistance in locating any article named in this chapter which has come into its possession. Failure to do so shall be punishable by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment for not less than one month nor more than six months, or by both fine and imprisonment. [1961 c 11 § 15.32.760. Prior: 1899 c 43 § 22; RRS § 6258.]

15.32.770 Court jurisdiction. Any superior, municipal, or district court shall have jurisdiction of all prosecutions and all proceedings for forfeiture and sale under this chapter. [1987 c 202 § 174; 1961 c 11 § 15.32.770. Prior: 1919 c 192 § 79; RRS § 6241.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.32.780 Unlawful price fixing—Exception. No two or more persons shall by agreement or understanding, tacit or otherwise, fix or attempt to fix the price at which butter, cheese, milk, or other products mentioned in this chapter shall be bought or sold; except that the provisions of this section shall not apply to ordinary sales between buyer and seller. [1961 c 11 § 15.32.780. Prior: 1919 c 192 § 80; RRS § 6242.]

15.32.790 Deceit relative to milk and cream measures, grades, etc. No person shall, with intent to deceive or defraud, manipulate, or alter the measure, grade, test, or weight of any milk or cream; or make any false or inaccurate statement relative to measure, grade, test, or weight thereof; or use any measure or grading or testing apparatus which does not comply with the standards prescribed in this chapter or which has been condemned by the director. [1961 c 11 § 15.32.790. Prior: 1927 c 192 § 6; 1919 c 192 § 22; RRS § 6185.]

15.32.900 Declaration of police power. It is hereby declared that this chapter is enacted as an exercise of the police power of the state of Washington for the preservation of the public health and each and every section thereof shall be construed as having been intended to effect such purpose and not as having been intended to affect any regulation or restraint of commerce between the several states which may by the Constitution of the United States of America have been reserved to the congress thereof. [1961 c 11 § 15.32.900. Prior: 1919 c 192 § 83; RRS § 6245.]

15.32.910 Chapter cumulative. Nothing in this chapter shall be construed as affecting or being intended to effect a repeal of chapter 69.04 RCW or RCW 69.40.010 through 69.40.025, or of any of such sections, or of any part or provision of any such sections, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic or thing which is also contained in, covered in or effected by said sections, or by any of them, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers and duties herein prescribed shall be construed to be additional to those prescribed in such sections and not in substitution therefor. And nothing in this chapter shall be construed to forbid the importation, transportation, manufacture, sale, or possession of any article of food which is not prohibited from interstate commerce by the laws of the United States or rules or regulations lawfully made thereunder, if there be a standard of quality, purity and strength therefor authorized by any law of this state, and such article comply therewith and be not misbranded. [1961 c 11 § 15.32.910. Prior: 1919 c 192 § 88; RRS § 6266.]

Chapter 15.35
WASHINGTON STATE MILK POOLING ACT

Sections

15.35.010 Short title. This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pooling among producers. [1971 ex.s. c 230 § 1.]

15.35.030 Declaration of public interest. It is hereby declared that:

(1) Milk is a necessary article of food for human consumption;

(2) The production, distribution, and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(3) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;

(4) Economic factors concerning the production, marketing, and sale of milk in the state may not be accurately reflected in federal programs;

(5) Conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pricing and pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary. [1991 c 239 § 1; 1971 ex.s. c 230 § 3.]

15.35.060 Purposes. The purposes of this chapter are to:

(1) Authorize and enable the director to prescribe marketing areas and to establish pricing and pooling arrangements which are necessary due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;

(2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter, in accordance with chapter 34.05 RCW, which provide for pricing and pooling arrangements and declare such plans in effect for any marketing area;

(3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers. [1991 c 239 § 2; 1971 ex.s. c 230 § 6.]

15.35.070 Powers conferred to be liberally construed—Monopoly—Price setting. It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk, nor shall this chapter give the director authority to establish retail prices for milk or milk products. [1991 c 239 § 3; 1971 ex.s. c 230 § 7.]

15.35.080 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department or the director's duly appointed representative;

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

(4) "Market" or "marketing area" means any geographical area within the state comprising one or more counties or parts thereof, or one or more cities or towns or parts thereof where marketing conditions are substantially similar and which may be designated by the director as one marketing area;

(5) "Milk" means all fluid milk from cows as defined in RCW 15.36.011 as enacted or hereafter amended and rules adopted thereunder;

(6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;

(7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant, as that term is defined in RCW 15.36.040 as enacted or hereafter amended and rules adopted thereunder:

(a) Who receives milk in an unprocessed state from dairy farms, and who processes milk into milk or milk products; and

(b) Whose milk plant is located within the state or from whose milk plant milk or milk products that are produced at least in part from milk from producers are disposed of to any place or establishment within a marketing area;

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW as enacted or hereafter amended;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) The terms "plan," "market area and pooling arrangement," "market area pooling plan," "market area and pooling plan," "market pool," and "market plan" all have the same meaning;

(11) "Producer-dealer" means a producer who engages in the production of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers. [1992 c 58 § 1; 1991 c 239 § 4; 1971 ex.s. c 230 § 8.]

15.35.090 Milk control between states. (1) The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states.

(2) In order to facilitate carrying out the provisions and purposes of this chapter, the department may hold joint hearings with authorized officers or agencies of other states who have duties and powers similar to those of the department or with any authorized person designated by the United States department of agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to producers for milk moving from one state to the other or any purpose to carry out and enforce this chapter. [1991 c 239 § 5; 1971 ex.s. c 230 § 9.]

15.35.100 Director's authority—Subpoena power—Rules. Subject to the provisions of this chapter and the specific provisions of any marketing plan established thereunder, the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and shall have the authority to:

(a) Establish classifications of processed milk and milk products, and a minimum price or a formula to determine a minimum price to be paid by milk dealers for milk used to produce each such class of products;

(b) Require that payment be made by dealers to producers of fluid milk or their cooperative associations and prescribe the method and time of such payments by dealers to producers or their cooperative associations in accordance with a marketing plan for milk;

(c) Determine what constitutes a natural milk market area;

(d) Determine by using uniform rules, what portion of the milk produced by each producer subject to the provisions of a marketing plan shall be marketable in fluid form and what proportion so produced shall be considered as surplus; such determination shall also apply to milk dealers who purchase or receive milk, for sale or distribution in such marketing area, from plants whose producers are not subject to such pooling arrangements;

(e) Provide for the pooling of minimum class values from the sales of each class of milk to milk dealers, and the equalization of returns to producers;

(f) Provide and establish market pools for a designated market area with such rules and regulations as the director may adopt;

(g) Employ an executive officer, who shall be known as the milk pooling administrator;

(h) Employ such persons as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(i) Determine by rule, what portion of any increase in the demand for fluid milk subject to a pooling arrangement and marketing plan providing for quotas shall be assigned new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended.

(3) To make, adopt, and enforce all rules necessary to carry out the purposes of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules, as enacted or hereafter amended: PROVIDED, That nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or any municipal corporation or the public service laws of this state. [1991 c 239 § 6; 1971 ex.s. c 230 § 10.]

15.35.105 Minimum milk price. In establishing a minimum milk price or a formula to determine a minimum milk price, as provided under RCW 15.35.060 and 15.35.100, the director shall, in addition to other appropriate criteria, consider the:

(1) Cost of producing fluid milk for human consumption;

(2) Transportation costs;

(3) Milk prices in states or regions outside of the state that influence prices within the marketing areas;

(4) Demand for fluid milk for human consumption; and

(5) Alternative enterprises available to producers. [1991 c 239 § 7.]

15.35.110 Referendum on establishing or discontinuing market area pooling arrangement. (1) The director, either upon his or her own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a pooling arrangement should be established, a referendum of affected individual producers and milk dealers shall be conducted by the department.

(2) In order for the director to establish a market area and pooling plan:

(a) Sixty-six and two-thirds percent of the producers and producer-dealers that vote must be in favor of establishing a market area and pooling plan;

(b) Sixty-six and two-thirds percent of the milk dealers and producer-dealers that vote must be in favor of establishing a market area and pooling plan; and

(c) Producer-dealers providing notice to the director under RCW 15.35.115(1), shall be authorized to vote both as producers and as milk dealers.

The director, within sixty days from the date the results of the referendum are filed with the secretary of state, shall establish a market pool in the market area, as provided for in this chapter.

(3) If fifty-one percent of the producers and producer-dealers voting representing fifty-one percent of the milk produced in the market area vote to terminate a pooling plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement.

(4) A referendum of affected producers, producer-dealers, and milk dealers shall be conducted only when a market area pooling arrangement is to be established. Only producers and producer-dealers who are subject to the plan may vote on the termination of a pooling plan. [1992 c 58 § 4; 1991 c 239 § 8; 1971 ex.s. c 230 § 11.]

15.35.115 Referendum on establishing or discontinuing market area pooling arrangement—Producer-dealers. (1) Not less than sixty days before a referendum creating a market area and pooling plan with quotas is to be conducted under RCW 15.35.110, the director shall notify each producer-dealer regarding the referendum. Any producer-dealer may choose to vote on the referendum and each choosing to do so shall notify the director in writing of this choice not later than thirty days before the referendum is conducted. Such a producer-dealer and any person who becomes a producer-dealer or producer by acquiring the quota of such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the sales of milk in fluid form from the producer facilities during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated dealer under the terms of such an approved plan. RCW 15.35.310(1) does not apply to a producer-dealer who is subject to regulation under this subsection.

(2) If a person was not a producer-dealer at the time notice was provided to producer-dealers under subsection (1) of this section regarding a referendum on a proposed market area and pooling plan with quotas, the plan was approved by referendum, and the person subsequently became a producer-dealer (other than by virtue of the person's acquisition of the quota of a producer-dealer who is fully regulated under the plan), the person is subject to all of the terms of the plan for producers and dealers during the duration of the plan and RCW 15.35.310(1) does not apply to such a person with regard to that plan.

(3) This subsection applies: To a person who was a producer-dealer at the time the notice was provided to producer-dealers under subsection (1) of this section regarding a referendum which was approved and who did not notify the director under subsection (1) of this section to vote in that referendum; and to a person who acquires the facility of such a person.

If such a person's sales of milk in fluid form subsequent to the adoption of the plan increases such that those sales in any year are more than fifty percent greater than the sales of milk in fluid form from the producer facilities during any of the previous five years, RCW 15.35.310(1) does not apply to that person with regard to that plan. Such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which is not less than the producer-dealer's sales of milk in fluid form during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated dealer under the terms of such an approved plan.

If changes are made, on a market area-wide basis, to the quotas established under the plan, the director shall by rule adjust the fifty percent limitation provided by this section by an equivalent amount. [1992 c 58 § 2.]

15.35.120 Qualifications for producers to sign petitions or vote in referendums. (1) The producers qualified to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The milk dealers qualified to vote in any referendum establishing a market pool shall be all those milk dealers who operate a plant which is located within the state and who would receive milk priced under a market pool if established in such market area.

(3) The director is authorized during business hours to review the books and records of milk dealers to obtain a list of the producers qualified to sign petitions or to vote in referendums and to verify that such milk dealers are qualified to vote in a referendum. [1991 c 239 § 9; 1971 ex.s. c 230 § 12.]

15.35.130 Form of producer petitions. Petitions filed with the director by producers shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The director shall not accept a sheet on which such date is more than sixty days, prior to the time it is filed with the director. After a petition is filed, additional pages may be filed if time limits have not expired.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the director if it is in reference to a request for public hearing, exactly what matters are to be studied and desired. Similar information must be directed to the director if the matter relates to a referendum. The director has the authority to clarify wording from a petition before making it a part of a referendum.

No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the director. [1971 ex.s. c 230 § 13.]

15.35.140 Director to establish systems within market areas. (1) The director shall establish a system of classifying, pricing, and pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director may establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, or their cooperative associations, will receive the same prices for all quota milk and all surplus over quota milk, except that any premium paid to a producer by a dealer above established prices shall not be considered in determining average pool prices. Such prices may reflect adjustments based on the value of component parts of each producer's milk. [1991 c 239 § 10; 1971 ex.s. c 230 § 14.]

15.35.150 Determination of quota. (1) Under a market pool and as used in this section, "quota" means a producer's or producer-dealer's portion of the total sales of milk in fluid form in a market area plus a reserve determined by the director.

(2) The director may in each market area subject to a market plan establish each producer's and each producer-dealer's initial quota in the market area. Such initial quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. In making this determination, consideration shall be given to a history of the producer's production record. In no case shall a producer-dealer receive as a quota an amount which is less than his or her fluid milk sales for the reference period used by the director in determining quotas for other producers.

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new increase in fluid milk sales in a reasonable proportion. The director may establish a method to proportionately decrease quota allocations in the event decreases in fluid milk consumption occur.

All subsequent changes or new quotas issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. [1992 c 58 § 5; 1991 c 239 § 11; 1971 ex.s. c 230 § 15.]

15.35.160 Contracts, rights and powers of associations not affected. No provision of this chapter shall be deemed or construed to:

(1) Affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation;

(2) Impair or affect any contract which any such cooperative association has with milk dealers or others which are not in violation of this chapter;

(3) Affect or abridge the rights and powers of any such cooperative association conferred by the laws of this state under which it is incorporated. [1971 ex.s. c 230 § 16.]

15.35.170 Quotas—Transfer of—Limitations. Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any producer shall become null and void as of any time the producer does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property and may be taken or abolished by the state without compensation. [1991 c 239 § 12; 1971 ex.s. c 230 § 17.]

15.35.180 Records of milk dealers and cooperatives, inspection and audit of. The director shall examine and audit not less than one time each year or at any other such time the director considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination.

The director may accept and use for the purposes of this section any audit made for or by a federal milk market order administrator which provides the information necessary for such purposes. [1991 c 239 § 13; 1971 ex.s. c 230 § 18.]

15.35.190 Records necessary for milk dealers. All milk dealers subject to the provisions of this chapter shall keep the records as deemed necessary by the director. [1971 ex.s. c 230 § 19.]

15.35.200 Verified reports of milk dealers. Each milk dealer subject to the provisions of this chapter shall from time to time, as required by rule of the director, make and file a verified report, on forms prescribed by the director, of all matters on account for which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose of this chapter. Such reports shall cover a period specified in the order, and shall be filed within a time fixed by the director. [1971 ex.s. c 230 § 20.]

15.35.210 Milk dealer license—Required. It shall be unlawful for any milk dealer subject to the provisions of a marketing plan to handle milk subject to the provisions of such marketing plan without first obtaining an annual license from the director for each separate place of business where such milk is received or sold. Such license shall be in addition to any other license required by the laws of this state: PROVIDED, That the provisions of this section shall not become effective for a period of sixty days subsequent to the inception of a marketing plan in any marketing area prescribed by the director. [1971 ex.s. c 230 § 21.]

15.35.220 Milk dealer license—Application for—Contents. Application for a license to act as a milk dealer shall be on a form prescribed by the director and shall contain, but not be limited to, the following:

(1) The nature of the business to be conducted;

(2) The full name and address of the person applying for the license if an individual; and if a partnership, the full name and address of each member thereof; and if a corporation, the full name and address of each officer and director;

(3) The complete address at which the business is to be conducted;

(4) Facts showing that the applicant has adequate personnel and facilities to properly conduct the business of a milk dealer;

(5) Facts showing that the applicant has complied with all the rules prescribed by the director under the provisions of this chapter;

(6) Any other reasonable information the director may require. [1971 ex.s. c 230 § 22.]

15.35.230 Milk dealer license—Fees—Additional assessment for late renewal. (1) Application for each milk dealer's license shall be accompanied by an annual license fee to be established by the director by rule.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a late fee of up to one-half of the license fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional assessment shall not apply if the applicant furnishes an affidavit that the applicant has not acted as a milk dealer subsequent to the expiration of his or her prior license. [1991 c 239 § 14; 1971 ex.s. c 230 § 23.]

15.35.240 Milk dealer license—Denial, suspension, or revocation of—Grounds. The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter 34.05 RCW concerning adjudicative proceedings, or rules adopted thereunder by the director, when he is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 23.86 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued. [1989 c 307 § 36; 1989 c 175 § 47; 1987 c 164 § 1; 1971 ex.s. c 230 § 24.]

Reviser's note: This section was amended by 1989 c 175 § 47 and by 1989 c 307 § 36, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Effective date—1989 c 175: See note following RCW 34.05.010.

15.35.250 Assessments on producers—Amount—Collection—Penalty for noncollection—Court action. There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this section and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court. [1991 c 239 § 15; 1971 ex.s. c 230 § 25.]

15.35.260 Records and reports of licensees for assessment purposes. Each licensee, in addition to other records required under the provisions of this chapter, shall keep such records and make such reports as the director may require for the purpose of computing payments of assessments by such licensee. [1971 ex.s. c 230 § 26.]

15.35.270 Assessment due date. All assessments on milk subject to the provisions of this chapter and a marketing order shall be paid to the director on or before the twentieth day of the succeeding month for the milk which was received or handled in the previous month. [1971 ex.s. c 230 § 27.]

15.35.280 Separate account for each marketing plan—Deductions for departmental costs. The director shall establish a separate account for each marketing plan established under the provisions of this chapter, and all license fees and assessments collected under any such marketing plan shall be deposited in its separate account to be used only for the purpose of carrying out the provisions of such marketing plan: PROVIDED, That the director may deduct from each such account the necessary costs incurred by the department. Such costs shall be prorated among the several marketing plans if more than one is in existence under the provisions of this chapter. [1971 ex.s. c 230 § 28.]

15.35.290 Court actions to implement. In addition to any other remedy provided by law, the director in the name of the state shall have the right to sue in any court of competent jurisdiction for the recovery of any moneys due it from any persons subject to the provisions of this chapter and shall also have the right to institute suits in equity for injunctive relief and for purpose of enforcement of the provisions of this chapter. [1971 ex.s. c 230 § 29.]

15.35.300 General penalty—Misdemeanor—Exception. Any violation of this chapter and/or rules and regulations adopted thereunder shall constitute a misdemeanor: PROVIDED, That this section shall not apply to retail purchasers who purchase milk for domestic consumption. [1971 ex.s. c 230 § 30.]

15.35.310 Certain producer-dealers exempt. (1) Except as provided in RCW 15.35.115, the provisions of this chapter shall not apply to persons designated as producer-dealers, except that:

(a) The director may require pursuant to RCW 15.35.100 any information deemed necessary to verify a producer-dealer's status as a producer-dealer; and

(b) A producer-dealer shall comply with all requirements of this chapter applicable to milk dealers, except those which the director may deem unnecessary.

(2) The director shall upon request designate producer-dealers and adopt rules governing eligibility for designation of a producer-dealer and cancellation of such designation. To receive such designation, a producer-dealer shall, at a minimum:

(a) In its capacity as a handler, have and exercise complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its own milk production resources and facilities as designated in subsection (4)(a) of this section, the operation and management of which are under the complete and exclusive control of the producer-dealer in its capacity as a dairy farmer;

(b) Neither receive at its designated milk production resources and facilities nor receive, handle, process, or distribute at or through any of its milk handling, processing, or distributing resources and facilities, as designated in subsection (4)(b) of this section, milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) other milk dealers within the limitation specified in subsection (2)(e) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products;

(c) Neither be directly nor indirectly associated with the business control or management of, nor have a financial interest in, another dealer's operation; nor shall any other dealer be so associated with the producer-dealer's operation;

(d) Not allow milk from the designated milk production resources and facilities of the producer-dealer to be delivered in the name of another person as producer milk to another handler; and

(e) Not handle fluid milk products derived from sources other than the designated milk production facilities and resources, except for fluid milk product purchased from pool plants which do not exceed in the aggregate a daily average during the month of one hundred pounds.

(3) Designation of any person as a producer-dealer following a cancellation of its prior designation shall be preceded by performance in accordance with subsection (2) of this section for a period of one month.

(4) Designation of a person as a producer-dealer shall include the determination and designation of the milk production, handling, processing, and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(a) As milk production resources and facilities: All resources and facilities, milking herd, buildings housing such herd, and the land on which such buildings are located, used for the production of milk:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer;

(ii) In which the producer-dealer in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-dealer. However, for purposes of this item (4)(a)(iii) any such milk production resources and facilities which the producer-dealer proves to the satisfaction of the director do not constitute an actual or potential source of milk supply for the producer-dealer's operation as such shall not be considered a part of the producer-dealer's milk production resources and facilities; and

(b) As milk handling, processing, and distributing resources and facilities: All resources and facilities including store outlets used for handling, processing, and distributing any fluid milk product:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-dealer; or

(ii) In which the producer-dealer in any way has an interest, including any contractual arrangement, or with respect to which the producer-dealer directly or indirectly exercises any degree of management or control.

(5) Designation as a producer-dealer shall be canceled automatically upon determination by the director that any of the requirements of subsection (2) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred. [1992 c 58 § 6; 1991 c 239 § 16; 1971 ex.s. c 230 § 31.]

15.35.900 Severability—1971 ex.s. c 230. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances, is not affected. [1971 ex.s. c 230 § 32.]

Chapter 15.36
FLUID MILK

Sections

Fluid milk, etc., containers, units: Chapter 19.94 RCW.

15.36.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 236.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

15.36.011 Milk and milk products—Imitation dairy products—Definitions and standards—Labels—Rules. The director of agriculture, by rule, may establish and/or amend definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products promulgated by the federal food and drug administration. The director of agriculture, by rule, may likewise establish and/or amend definitions and standards for products whether fluid, powdered or frozen, compounded or manufactured to resemble or in semblance or imitation of genuine dairy products as defined under the provisions of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600 or chapter 15.32 RCW as enacted or hereafter amended. Such products made to resemble or in semblance or imitation of genuine dairy products shall conform with all the provisions of chapter 15.38 RCW and be made wholly of nondairy products.

All such products compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product shall set forth on the container or labels the specific generic name of each ingredient used.

In the event any product compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product contains vegetable fat or oil, the generic name of such fat or oil shall be set forth on the label. If a blend or variety of oils is used, the ingredient statement shall contain the term "vegetable oil" in the appropriate place in the ingredient statement, with the qualifying phrase following the ingredient statement, such as "vegetable oils are soybean, cottonseed and coconut oils" or "vegetable oil, may be cottonseed, coconut or soybean oil."

The labels or containers of such products compounded or manufactured to resemble or in semblance or imitation of genuine dairy products shall not use dairy terms or words or designs commonly associated with dairying or genuine dairy products, except as to the extent that such words or terms are necessary to meet legal requirements for labeling: PROVIDED, That the term "nondairy" may be used as an informative statement.

The director may adopt any other rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW: PROVIDED, That these rules shall not restrict the display or promotion of products covered under this section. The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules. [1989 c 354 § 13; 1969 ex.s. c 102 § 1.]

Severability—1989 c 354: See note following RCW 15.32.010.

Repealed definitions constitute rules: "The definitions constituting section 15.36.010, chapter 11, Laws of 1961 and RCW 15.36.010 as hereinafter in section 7 of this 1969 amendatory act repealed are hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture." [1969 ex.s. c 102 § 2.]

15.36.020 "Pasteurization" defined. The terms "pasteurization," "pasteurize" and similar terms, shall mean the process of heating every particle of milk or milk product in properly designed and operated equipment, to one of the temperatures given in the following table, and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
145°F (63°C)	30 minutes
161°F (72°C)	15 seconds
191°F (89°C)	1.0 second
194°F (90°C)	0.5 second
201°F (94°C)	0.1 second
204°F (96°C)	0.05 second
212°F (100°C)	0.01 second

If the fat content of the milk product is ten percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F (3°C). Eggnog shall be heated to at least the following temperature and time specifications:

Temperature	Time
155°F (69°C)	30 minutes
175°F (80°C)	25 seconds
180°F (83°C)	15 seconds

Nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the federal food and drug administration to be equally efficient and which is approved by the director. [1989 c 354 § 14; 1961 c 11 § 15.36.020. Prior: 1955 c 238 § 3; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.030 Definitions—"Adulterated and misbranded milk and milk products." "Adulterated and misbranded milk and milk products." Any milk to which water has been added, or any milk or milk product which contains any unwholesome substance, or which if defined in this chapter does not conform with its definition, shall be deemed adulterated. Any milk or milk products which carries a grade label unless such grade label has been awarded by the director and not revoked, or which fails to conform in any other respect with the statements on the label, shall be deemed to be misbranded. [1961 c 11 § 15.36.030. Prior: 1955 c 238 § 4; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

Civil penalty for violations of standards for component parts of fluid dairy products established by RCW 15.36.030: RCW 15.36.595.

15.36.040 Definitions—"Milk producer"—"Milk distributor"—"Dairy"—"Milk hauler"—"Milk plant." A "milk producer" is any person or organization who owns or controls one or more cows a part or all of the milk or milk products from which is sold or offered for sale.

A "milk distributor" is any person who offers for sale or sells to another any milk or milk products for human consumption as such and shall include a milk producer selling or offering for sale milk or milk products at the dairy farm.

A "dairy" or "dairy farm" is any place or premises where one or more cows are kept, a part or all of the milk or milk products from which is sold or offered for sale.

A "milk hauler" is any person, other than a milk producer or a milk plant employee, who transports milk or milk products to or from a milk plant or a collecting point.

A "milk plant" is any place, premises or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, or prepared for distribution, except an establishment where milk or milk products are sold at retail only. [1961 c 11 § 15.36.040. Prior: 1955 c 238 § 5; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

15.36.055 Definitions—"Official brucellosis adult vaccinated cattle." "Official brucellosis adult vaccinated cattle" means those cattle, officially vaccinated over the age of official calfhood vaccinated cattle, which the director has determined have been commingled with, or kept in close proximity to, cattle identified as brucellosis reactors, and have been vaccinated against brucellosis in a manner and under the conditions prescribed by the director after a hearing and under rules adopted under chapter 34.05 RCW, the administrative procedure act. [1982 c 131 § 1.]

15.36.060 "Person," "director," "department" defined. The word "person" means any individual, partnership, firm, corporation, company, trustee, or association.

"Director" means the director of agriculture of the state of Washington or his duly authorized representative.

"Department" means the state department of agriculture. [1989 c 354 § 15; 1984 c 226 § 2; 1961 c 11 § 15.36.060. Prior: 1955 c 238 § 7; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.070 Sale of adulterated, misbranded, or ungraded milk or milk products prohibited. No person shall produce, sell, offer, or expose for sale, or have in possession with intent to sell, in the fluid state for direct consumption as such, any milk or milk product which is adulterated, misbranded, or ungraded. It shall be unlawful for any person, elsewhere than in a private home, to have in possession any adulterated, misbranded, or ungraded milk or milk products: PROVIDED, That in an emergency the sale of ungraded milk or milk products may be authorized by the director, in which case they shall be labeled "ungraded."

Adulterated, misbranded, and/or ungraded milk or milk products may be impounded and disposed of by the director. [1961 c 11 § 15.36.070. Prior: 1949 c 168 § 2; Rem. Supp. 1949 § 6266-31.]

15.36.075 Milk not deemed adulterated if added ingredient is approved by rule or regulation. For the purpose of this chapter, no fluid milk or fluid milk product shall be deemed to be adulterated if such fluid milk or fluid milk product contains an added ingredient or substance in the amount and kind prescribed or allowed by a rule or regulation promulgated by the director subsequent to a public hearing pursuant to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended. [1969 ex.s. c 102 § 3.]

15.36.080 Permits. It shall be unlawful for any person to transport, or to sell, or offer for sale, or to have in storage where milk or milk products are sold or served, any milk or milk product defined in this chapter, who does not possess an appropriate permit from the director.

Every milk producer, milk distributor, milk hauler, and operator of a milk plant shall secure a permit to conduct such operation as defined in this chapter. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

Such a permit may be temporarily suspended by the director upon violation by the holder of any of the terms of this chapter, or for interference with the director in the performance of his duties, or revoked after an opportunity for a hearing by the director upon serious or repeated violations. [1989 c 354 § 16; 1961 c 11 § 15.36.080. Prior: 1955 c 238 § 8; 1949 c 168 § 3; Rem. Supp. 1949 § 6266-32.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.090 Labeling. All bottles, cans, packages, and other containers, enclosing milk or any milk product defined in this chapter shall be plainly labeled or marked with (1) the name of the contents as given in the definitions of this chapter; (2) the grade of the contents; (3) the word "pasteurized" only if the contents have been pasteurized; (4) the word "raw" only if the contents are raw; (5) the name of the producer if the contents are raw, and the identity of the plant at which the contents were pasteurized if the contents are pasteurized; (6) the phrase "for pasteurization" if the contents are to be pasteurized; (7) in the case of vitamin D milk the

designation "vitamin D milk," the source of the vitamin D and the number of units per quart; (8) the word "reconstituted" or "recombined" if included in the name of the product as defined in this chapter; (9) in the case of concentrated milk or milk products the volume or proportion of water to be added for recombining; (10) the words "skim milk solids added," and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk or milk products: PROVIDED, That only the identity of the producer shall be required on cans delivered to a milk plant which receives only raw milk for pasteurization and which immediately dumps, washes, and returns the cans to the producer.

The label or mark shall be in letters of a size, kind, and color approved by the director and shall contain no marks or words which are misleading. [1961 c 11 § 15.36.090. Prior: 1955 c 238 § 9; 1949 c 168 § 4; Rem. Supp. 1949 § 6266-33.]

15.36.100 Inspection of dairy farms and milk plants. Prior to the issuance of a permit and at least once every six months the director shall inspect all dairy farms and all milk plants: PROVIDED, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of sanitation, he shall make a second inspection after a lapse of such time as he deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Any violation of the same requirement of this chapter on such reinspection shall call for immediate degrading or suspension of permit.

One copy of the inspection report shall be posted by the director in a conspicuous place upon an inside wall of one of the dairy farm or milk plant buildings, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

Every milk producer and distributor shall upon the request of the director permit him access to all parts of the establishment, and every distributor shall furnish the director, upon his request, for official use only, samples of any milk product for laboratory analysis, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, together with a list of all sources, records of inspections and tests, and recording thermometer charts. [1961 c 11 § 15.36.100. Prior: 1949 c 168 § 5; Rem. Supp. 1949 § 6266-34.]

15.36.105 Dairy inspection program—Assessment. (Expires June 30, 1994.) There is levied on all milk processed in this state an assessment not to exceed one-half of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk plant receiving the milk for processing. This shall include milk plants that produce their own milk for processing and milk plants that receive milk from other sources. All moneys collected under this section shall be paid to the director by the twentieth day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry. If the operator of a milk plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

This section shall take effect July 1, 1992, and shall expire June 30, 1994. [1992 c 160 § 1.]

15.36.107 Dairy inspection program—Advisory committee. (1) There is created a dairy inspection program advisory committee. The committee shall consist of nine members. The committee shall be appointed by the director from names submitted by dairy producer organizations or from handlers of milk products. The committee shall consist of four members who are producers of milk or their representatives, and four members who are handlers or their representatives, and one member who must be a producer-handler.

(2) The purpose of this advisory committee is to assist the director by providing recommendations regarding the dairy inspection program, that are consistent with the pasteurized milk ordinance. The advisory committee shall (a) review and evaluate the program including the efficiency of the administration of the program, the adequacy of the level of inspection staff, the ratio of inspectors to number of dairy farm inspections per year, and the ratio of inspectors to management employees; and (b) consider alternatives to the state program, which may include privatization of various elements of the inspection program.

(3) The committee shall meet as necessary to complete its work. Meetings of the committee are subject to the open public meetings act.

(4) Not later than October 15, 1992, the advisory committee shall issue a preliminary report of its findings to the dairy industry. The committee shall solicit comments from the dairy industry which shall be reflected in the committee's final report.

(5) Not later than December 1, 1992, the advisory committee shall report to the agricultural committees of the house of representatives and senate its recommendations for long-term structure and funding of the dairy inspection program. [1992 c 160 § 2.]

15.36.110 Examination of milk and milk products. During each six months period at least four samples of milk and cream from each dairy farm and each milk plant shall be taken on separate days and examined by the director: PROVIDED, That in the case of raw milk for pasteurization the director may accept the results of nonofficial laboratories which have been officially checked periodically and found satisfactory. Samples of other milk products may be taken

and examined by the director as often as he deems necessary. Samples of milk and milk products from stores, cafes, soda fountains, restaurants, and other places where milk or milk products are sold shall be examined as often as the director may require. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphatase tests and other laboratory tests shall conform to the procedures in the current edition of "Standard Methods For The Examination Of Dairy Products," recommended by the American public health association. Examinations may include such other chemical and physical determinations as the director may deem necessary for the detection of adulteration. Samples may be taken by the director at any time prior to the final delivery of the milk or milk products. All proprietors of cafes, stores, restaurants, soda fountains, and other similar places shall furnish the director, upon his request, with the name of all distributors from whom their milk and milk products are obtained. Bio-assays of the vitamin D content of vitamin D milk shall be made when required by the director in a laboratory approved by him for such examinations.

If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one days of the sending of the notice, but not before the lapse of three days, except sixty days must lapse before an official somatic cell count can be taken. The director shall degrade or suspend the grade A permit whenever the standard is again violated so that three of the last five consecutive samples exceed the limit of the standard. A grade A permit shall subsequently be reinstated in notice status upon receipt of sample results that are within the standard for which the suspension occurred.

In case of violation of the phosphatase test requirements, the cause of underpasteurization shall be determined and removed before milk or milk products from this plant can again be sold as pasteurized milk or milk products. [1989 c 354 § 17; 1981 c 297 § 1; 1961 c 11 § 15.36.110. Prior: 1955 c 238 § 10; 1949 c 168 § 6; Rem. Supp. 1949 § 6266-35.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1981 c 297: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 297 § 43.]

15.36.115 Examination of milk and milk products—Residue test results—Civil penalty. (1) If the results of an antibiotic, pesticide, or other drug residue test are above the actionable level established in the pasteurized milk ordinance published by the United States public health service and determined using procedures set forth in the current edition of "Standard Methods for the Examination of Dairy Products," a producer holding a grade A permit is subject to a civil penalty. The penalty shall be in an amount equal to one-half the value of the sum of the volumes of milk equivalent produced under the permit on the day prior to and the day of the adulteration. The value of the milk shall be computed by the weighted average price for the federal market order under which the milk is delivered.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, and, if so, shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.05 RCW. Tests performed for antibiotic, pesticide, or other drug residues by a state or certified industry laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of the presence or absence of an antibiotic, pesticide, or other drug residue.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department. The penalty shall be deducted by the violator's marketing organization from the violator's final payment for the month following the issuance of the final order. The department shall promptly notify the violator's marketing organization of any penalties contained in the final order.

(4) All penalties received or recovered from violations of this section shall be remitted monthly by the violator's marketing organization to the Washington state dairy products commission and deposited in a revolving fund to be used solely for the purposes of education and research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the antibiotic, pesticide, or other drug residue test requirements, an investigation shall be made to determine the cause of the residue which shall be corrected. Additional samples shall be taken as soon as possible and tested as soon as feasible for antibiotic, pesticide, or other drug residue by the department or a certified laboratory. After the notice has been received by the producer and the results of a test of such an additional sample indicate that residues are above the actionable level or levels referred to in subsection (1) of this section, the producer's milk may not be sold until a sample is shown to be below the actionable levels established for the residues. [1989 c 354 § 18; 1989 c 175 § 48; 1984 c 226 § 1.]

Reviser's note: This section was amended by 1989 c 175 § 48 and by 1989 c 354 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1989 c 354: See note following RCW 15.32.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

15.36.120 Grading of milk and milk products—In general. Grades of milk and milk products as defined in this chapter shall be based on the respectively applicable standards contained in RCW 15.36.120 through 15.36.460,

with the grading of milk products being identical with the grading of milk, except that bacterial standards are omitted in the case of cultured milk products. Vitamin D milk shall be only of grade A, certified pasteurized, or certified raw quality. The grade of a milk product shall be that of the lowest grade milk or milk product used in its preparation. [1984 c 226 § 3; 1981 c 297 § 2; 1961 c 11 § 15.36.120. Prior: 1955 c 238 § 12; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.36.140 Grade A raw milk—Standards in general. Grade A raw milk is raw milk produced upon dairy farms conforming with all of the items of sanitation contained in RCW 15.36.150 through 15.36.280, and the bacterial plate count does not exceed twenty thousand per milliliter and the coliform count does not exceed ten per milliliter.

Grade A raw milk for pasteurization is raw milk produced upon dairy farms conforming with all of the same items of sanitation except RCW 15.36.265 (bottling and capping), 15.36.270 (personnel health), and portions of other items as indicated, and the bacterial plate count, as delivered from the farm, does not exceed eighty thousand per milliliter as determined in accordance with RCW 15.36.110. [1984 c 226 § 4; 1981 c 297 § 3; 1961 c 11 § 15.36.140. Prior: 1955 c 238 § 14; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.36.150 Cows—Tuberculosis, brucellosis, other diseases. Except as provided hereinafter, tuberculin test of all herds and additions thereto shall be made before any milk therefrom is sold, and at least once every twelve months thereafter, by an accredited and licensed veterinarian approved by the state department of agriculture or veterinarian employed by the bureau of animal industry, United States department of agriculture. Said tests shall be made and the reactors disposed of in accordance with the requirements approved by the director for accredited herds. A certificate signed by the veterinarian or attested to by the director and filed with the director shall be evidence of the above test: PROVIDED, That in modified accredited counties in which the modified accredited area plan is applied to the dairy herds, the modified accredited area system approved by the director shall be accepted in lieu of annual testing.

No fluid milk or cream designated or represented to be "grade A" fluid milk or cream shall be sold, offered or exposed for sale which has been produced from a herd of cows, one or more of which are infected with brucellosis at the time such milk is produced, or from animals in such herd which have not been blood tested for brucellosis at least once during the preceding calendar year, or milk ring tested for brucellosis at least semiannually during the preceding year. The results of a test for brucellosis by the state or federal laboratory of a blood sample drawn by an official veterinarian, shall be prima facie evidence of the infection or noninfection of the animal or herds: PROVIDED, That in lieu thereof, two official negative milk ring tests for brucellosis not less than six months apart may be accepted as such evidence. All herds of cows, the fluid milk or cream from which is designated or represented to be "grade A" fluid milk or cream shall be blood tested for brucellosis annually or milk ring tested for brucellosis semiannually. Such herds showing any reaction to the milk ring test shall be blood tested and all reactors to the blood test removed from the herd and disposed of within fifteen days from the date they are tagged and branded. The remaining animals in the infected herd shall be retested at not less than thirty-day nor more than sixty-day intervals from the date of the first test: PROVIDED, That herds that have been officially brucellosis adult vaccinated shall be retested not less than sixty days nor more than one hundred fifty days after being so vaccinated and such herds shall be retested and released from quarantine at intervals and under conditions prescribed by the director. A series of retests, with removal and disposition of reacting animals, shall be continued until the herd shall have passed two successive tests in which no reactors are found. If upon a final test, not less than six months nor more than seven months from the date of the last negative test, no reactors are found in the herd, it shall be deemed a disease free herd. Results of official blood or milk ring tests shall be conspicuously displayed in the milk house.

All milk and milk products consumed raw shall be from herds or additions thereto which have been found free from brucellosis, as shown by blood serum tests or other approved tests for agglutinins against brucella organisms made in a laboratory approved by the director. All such herds shall be retested at least every twelve months and all reactors removed from the herd. If a herd is found to have one or more animals positive to the brucellosis test, all milk from that herd is to be pasteurized until the three consecutive brucellosis tests obtained at thirty-day intervals between each test are found to be negative. A certificate identifying each animal by number and signed by the laboratory making the test shall be evidence of the above test.

Cows which show an extensive or entire induration of one or more quarters of the udder upon physical examination, whether secreting abnormal milk or not, shall be permanently excluded from the milking herd. Cows giving bloody, or stringy, or otherwise abnormal milk, but with only slight induration of the udder shall be excluded from the herd until reexamination shows that the milk has become normal.

For other diseases such tests and examinations as the director may require after consultation with state livestock sanitary officials shall be made at intervals and by methods prescribed by him. [1982 c 131 § 2; 1961 c 11 § 15.36.150. Prior: 1955 c 238 § 15; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.155 Grade A raw milk—Dairy barn, lighting. A milking barn or stable shall be provided. It shall be provided with adequate light, properly distributed, for day or night milking. [1961 c 11 § 15.36.155. Prior: 1955 c 238 § 16; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.160 Grade A raw milk—Dairy barn, air space, ventilation. Such sections of all dairy barns where cows are kept or milked shall be well ventilated and shall be so arranged as to avoid overcrowding. [1961 c 11 §

15.36.160. Prior: 1955 c 238 § 17; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.165 Grade A raw milk—Milking stable, floors, animals. The floors and gutters of that portion of the barn or stable in which cows are milked shall be constructed of concrete or other approved impervious and easily cleaned material: PROVIDED, That if the milk is to be pasteurized, tight, two-inch tongue and groove wood, impregnated with waterproofing material and laid with a mastic joint at the gutter may be used under the cows. Floors and gutters shall be graded to drain properly and shall be kept clean and in good repair. No horses, swine, or fowl shall be permitted in the milking stable. If dry cows, calves, or bulls are stabled therein, they shall be confined in stalls, stanchions or pens. [1961 c 11 § 15.36.165. Prior: 1955 c 238 § 18; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.170 Grade A raw milk—Milking stable, walls and ceiling. The interior walls and the ceilings of the milking barn or stable shall be smooth, shall be whitewashed or painted as often as may be necessary, or finished in an approved manner, and shall be kept clean and in good repair. In case there is a second story above the milking barn or stable the ceiling shall be tight. If hay, grain or other feed is stored in a feed room or feed storage space adjoining the milking space, it shall be separated therefrom by a dust tight partition and door. No feed shall be stored in the milking portion of the barn unless stored in dust tight containers. [1961 c 11 § 15.36.170. Prior: 1955 c 238 § 19; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.175 Grade A raw milk—Cow yard. The cow yard shall be graded and drained as well as practicable and so kept that there are no standing pools of water nor accumulation of organic wastes. Swine shall be kept out. [1961 c 11 § 15.36.175. Prior: 1955 c 238 § 20; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.180 Grade A raw milk—Manure disposal. All manure shall be removed and stored at least fifty feet from the milking barn or disposed of in such manner as best to prevent the breeding of flies therein and the access of cows to piles thereof: PROVIDED, That in loafing or pen type stables manure droppings shall be removed or clean bedding added at sufficiently frequent intervals to prevent the accumulation of manure on cows' udders and flanks and the breeding of flies. [1961 c 11 § 15.36.180. Prior: 1955 c 238 § 21; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.185 Grade A raw milk—Milk house or room, construction. There shall be provided a milk house or milk room in which the cooling, handling, and storing of milk and milk products and the washing, bactericidal treatment, and storing of milk containers and utensils shall be done. (1) The milk house or room shall be provided with a tight floor constructed of concrete or other impervious material, in good repair, and graded to provide proper drainage. (2) It shall have walls and ceilings of such construction as to permit easy cleaning, and shall be well painted or finished in an approved manner. (3) It shall be well lighted and ventilated. (4) It shall have all openings effectively screened, including outward-opening, self-closing doors, unless other effective means are provided to prevent the entrance of flies. (5) It shall be used for no other purposes than those specified above, except as may be approved by the director. (6) It shall not open directly into a stable or into any room for domestic purposes. (7) It shall have water piped into it. (8) It shall be provided with adequate facilities for the heating of water for the cleaning of utensils. (9) It shall be equipped with two-compartment stationary wash and rinse vats, except that in the case of retail raw milk, if chemicals are employed as the principal bactericidal treatment, the three-compartment type must be used; (10) and shall, unless the milk is to be pasteurized, be partitioned to separate the handling of milk and the storage of cleaned utensils from the cleaning and other operations, which shall be so located and conducted as to prevent any contamination of the milk or of cleaned equipment. [1961 c 11 § 15.36.185. Prior: 1955 c 238 § 22; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.190 Grade A raw milk—Milk house or room, cleanliness, flies. The floors, walls, ceilings, and equipment of the milk house or room shall be kept clean at all times. All means necessary for the elimination of flies shall be used. [1961 c 11 § 15.36.190. Prior: 1955 c 238 § 23; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.195 Grade A raw milk—Toilet. Every dairy farm shall be provided with one or more sanitary toilets conveniently located and properly constructed, operated and maintained so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply. [1961 c 11 § 15.36.195. Prior: 1955 c 238 § 24; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.200 Grade A raw milk—Water supply. The water supply for the milk room and dairy barn shall be properly located, constructed, and operated, and shall be easily accessible, adequate, and of a safe sanitary quality according to standards approved by the state board of health. [1961 c 11 § 15.36.200. Prior: 1955 c 238 § 25; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.205 Grade A raw milk—Utensils, holding tanks, construction. All multi-use containers, equipment, or other utensils used in the handling, storage, or transportation of milk or milk products shall be made of smooth nonabsorbent material and of such construction as to be easily cleaned and shall be in good repair. Joints and seams shall be welded or soldered flush. Woven wire cloth or multi-use cloth shall not be used for straining milk. If milk is strained, filter pads shall be used and not reused. All milk pails shall be of the seamless hooded type. All single-service containers, closures, and filter pads used shall have been manufactured, packaged, transported, and handled in a sanitary manner.

The design, construction, material and operation of all farm holding tanks shall be such as approved by the director.

[1961 c 11 § 15.36.205. Prior: 1955 c 238 § 26; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.210 Grade A raw milk—Utensils, cleaning. All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk or milk products must be thoroughly cleaned after each usage. [1961 c 11 § 15.36.210. Prior: 1955 c 238 § 27; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.215 Grade A raw milk—Utensils, bactericidal treatment. All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk or milk products shall, before each usage, be effectively subjected to an approved bactericidal process with steam, hot water, chemicals, or hot air. [1961 c 11 § 15.36.215. Prior: 1955 c 238 § 28; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.220 Grade A raw milk—Utensils, storage. All containers and other utensils used in the handling, storage, or transportation of milk or milk products shall, unless stored in bactericidal solutions, be so stored as to drain and dry and so as not to become contaminated before being used. [1961 c 11 § 15.36.220. Prior: 1955 c 238 § 29; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.225 Grade A raw milk—Utensils, handling. After bactericidal treatment containers and other milk and milk product utensils shall be handled in such a manner as to prevent contamination of any surface with which milk or milk products come in contact. [1961 c 11 § 15.36.225. Prior: 1955 c 238 § 30; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.230 Grade A raw milk—Milking, udders and teats, abnormal milk. Milking shall be done in the milking barn or stable. The udders and teats of all milking cows shall be clean and wiped with an approved bactericidal solution immediately preceding the time of milking. Abnormal milk shall be kept out of the milk supply and shall be so handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils. [1961 c 11 § 15.36.230. Prior: 1955 c 238 § 31; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.235 Grade A raw milk—Milking—Flanks, bellies, and tails. The flanks, bellies, and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences. [1961 c 11 § 15.36.235. Prior: 1955 c 238 § 32; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.240 Grade A raw milk—Milkers' hands. Milkers' hands shall be clean, rinsed with bactericidal solution, and dried with a clean towel immediately before milking and following any interruption in the milking operation. Wet-hand milking is prohibited. Convenient facilities shall be provided for the washing of milkers' hands. [1961 c 11 § 15.36.240. Prior: 1955 c 238 § 33; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.245 Grade A raw milk—Clean clothing. Milkers and milk handlers shall wear clean outer garments while milking or handling milk, milk products, containers, utensils, or equipment. [1961 c 11 § 15.36.245. Prior: 1955 c 238 § 34; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.250 Grade A raw milk—Milk stools. Milk stools shall be kept clean. [1961 c 11 § 15.36.250. Prior: 1955 c 238 § 35; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.255 Grade A raw milk—Removal of milk. Each pail or can of milk shall be removed immediately to the milk house or straining room. No milk shall be strained or poured in the barn unless it is protected from flies and other contamination. [1961 c 11 § 15.36.255. Prior: 1955 c 238 § 36; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.260 Grade A raw milk—Cooling. Milk and milk products for consumption in the raw state or for pasteurization shall be cooled within two hours of completion of milking to forty degrees Fahrenheit or less and maintained at that temperature until picked up, in accordance with RCW 15.36.110, so long as the blend temperature after the first and following milkings does not exceed fifty degrees Fahrenheit. [1984 c 226 § 5; 1961 c 11 § 15.36.260. Prior: 1955 c 238 § 37; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.265 Grade A raw milk—Bottling and capping. Milk and milk products for consumption in the raw state shall be bottled on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and these operations shall be integral in one machine. Caps or cap stock shall be purchased in sanitary containers and kept therein in a clean dry place until used. [1961 c 11 § 15.36.265. Prior: 1955 c 238 § 38; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.270 Grade A raw milk—Personnel, health. The health officer or a physician authorized by him shall examine and take a careful morbidity history of every person connected with a producer-distributor dairy, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggest that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state health authorities for such examinations, and if the results justify such person shall be

barred from such employment. [1961 c 11 § 15.36.270. Prior: 1955 c 238 § 39; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.280 Grade A raw milk—Vehicles—Surroundings. All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun, from freezing, and from contamination. All vehicles used for the distribution of milk and milk products shall have the distributor's name prominently displayed. Deck boards must be used when more than one deck of cans are transported.

The immediate surroundings of the dairy shall be kept clean and free of health menaces. [1961 c 11 § 15.36.280. Prior: 1955 c 238 § 40; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.300 "Grade C raw milk" defined. Grade C raw milk is raw milk which violates any of the requirements of grade A raw milk. [1989 c 354 § 19; 1961 c 11 § 15.36.300. Prior: 1955 c 238 § 42; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.320 Grade A pasteurized milk—Standards. Grade A pasteurized milk is grade A raw milk for pasteurization which has been pasteurized, cooled and placed in the final container in a milk plant conforming with all of the items of sanitation contained in RCW 15.36.325 to 15.36.440, inclusive, which in all cases shows efficient pasteurization as evidenced by satisfactory phosphatase tests, and which at no time after pasteurization and until delivery has a bacterial plate count exceeding twenty thousand per milliliter or a positive coliform test in more than two out of four samples taken on separate days as determined in accordance with RCW 15.36.110: PROVIDED, That the raw milk at no time between dumping and pasteurization, shall have a bacterial plate count exceeding three hundred thousand per milliliter.

The grading of a pasteurized-milk supply shall include the inspection of receiving and collection stations with respect to compliance with RCW 15.36.325 to 15.36.395, inclusive, and RCW 15.36.405, 15.36.415, 15.36.430 and 15.36.440, except that the partitioning requirement of RCW 15.36.345 shall not apply. [1981 c 297 § 5; 1961 c 11 § 15.36.320. Prior: 1955 c 238 § 44; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.36.325 Grade A pasteurized milk—Floors. The floors of all rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth, properly drained, provided with trapped drains, and kept clean and in good repair. [1961 c 11 § 15.36.325. Prior: 1955 c 238 § 45; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.330 Grade A pasteurized milk—Walls and ceiling. Walls and ceilings of rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall have a smooth, washable, light colored surface, and shall be kept clean and in good repair. [1961 c 11 § 15.36.330. Prior: 1955 c 238 § 46; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.335 Grade A pasteurized milk—Doors and windows. Unless other effective means are provided to prevent the access of flies, all openings to the outer air shall be effectively screened and all doors shall be self-closing. [1961 c 11 § 15.36.335. Prior: 1955 c 238 § 47; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.340 Grade A pasteurized milk—Lighting and ventilation. All rooms shall be well lighted and ventilated. [1961 c 11 § 15.36.340. Prior: 1955 c 238 § 48; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.345 Grade A pasteurized milk—Miscellaneous, protection from contamination. The various milk-plant operations shall be so located and conducted as to prevent any contamination of the milk or of the cleaned equipment. All means necessary for the elimination of flies, other insects and rodents shall be used. There shall be separate rooms for (1) the pasteurization, processing, cooling, and bottling operations, and (2) the washing and bactericidal treatment of containers. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. Rooms in which milk, milk products, cleaned utensils, or containers are handled or stored shall not open directly into any stable or living quarters. The pasteurization plant shall be used for no other purposes than the processing of milk and milk products and the operations incident thereto, except as may be approved by the director. [1961 c 11 § 15.36.345. Prior: 1955 c 238 § 49; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.350 Grade A pasteurized milk—Toilet facilities. Every milk plant shall be provided with toilet facilities approved by the director. Toilet rooms shall not open directly into any room in which milk, milk products, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well ventilated. A placard containing RCW 15.36.520 and a sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms used by employees. [1961 c 11 § 15.36.350. Prior: 1955 c 238 § 50; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.355 Grade A pasteurized milk—Water supply. The water supply shall be easily accessible, adequate, and of a safe sanitary quality according to standards approved by the state board of health. [1961 c 11 §

15.36.355. Prior: 1955 c 238 § 51; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.360 Grade A pasteurized milk—Hand-washing facilities. Convenient hand-washing facilities shall be provided, including hot and cold running water, soap, and approved sanitary towels. Hand-washing facilities shall be kept clean. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands. [1961 c 11 § 15.36.360. Prior: 1955 c 238 § 52; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.365 Grade A pasteurized milk—Sanitary piping. All piping used to conduct milk or milk products shall be "sanitary milk piping" of a type which can be easily cleaned with a brush. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary milk piping. [1961 c 11 § 15.36.365. Prior: 1955 c 238 § 53; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.370 Grade A pasteurized milk—Construction and repair of containers and equipment. All multi-use containers and equipment with which milk or milk products come in contact shall be so constructed and located as to be easily cleaned and shall be kept in good repair. All single-service containers, closures and gaskets used shall have been manufactured, packaged, transported and handled in a sanitary manner. [1961 c 11 § 15.36.370. Prior: 1955 c 238 § 54; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.375 Grade A pasteurized milk—Plumbing and disposal of wastes. All wastes shall be properly disposed of. All plumbing and equipment shall be so designed and installed as to prevent contamination of the water supply and of milk equipment by backflow or siphonage. [1961 c 11 § 15.36.375. Prior: 1955 c 238 § 55; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.380 Grade A pasteurized milk—Cleaning and bactericidal treatment of containers and equipment. All milk and milk products containers, including tank trucks and tank cars and all equipment, except single-service containers, shall be thoroughly cleaned after each usage. All such containers shall be effectively subjected to an approved bactericidal process after each cleaning and all equipment immediately before each usage. When empty and before being returned to a producer or distributor by a milk plant each container, including tank trucks and tank cars, shall be thoroughly cleaned and effectively subjected to an approved bactericidal process. [1961 c 11 § 15.36.380. Prior: 1955 c 238 § 56; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.385 Grade A pasteurized milk—Storage of containers and equipment. After bactericidal treatment all bottles, cans, and other multi-use milk or milk products containers and equipment shall be stored in such manner as to be protected from contamination. [1961 c 11 § 15.36.385. Prior: 1955 c 238 § 57; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.390 Grade A pasteurized milk—Handling of containers and equipment. Between bactericidal treatment and usage and during usage, containers and equipment shall be handled or operated in such manner as to prevent contamination of the milk. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to an approved bactericidal process. No milk or milk products shall be permitted to come in contact with equipment with which a lower grade of milk or milk products has been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to an approved bactericidal process. [1961 c 11 § 15.36.390. Prior: 1955 c 238 § 58; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.395 Grade A pasteurized milk—Storage of caps, parchment paper, and single service containers. Milk bottle caps or cap stock, parchment paper for milk cans and single service containers and gaskets shall be purchased and stored only in sanitary tubes, wrappings, and cartons, and shall be kept therein in a clean, dry place, and shall be handled in a sanitary manner. [1961 c 11 § 15.36.395. Prior: 1955 c 238 § 59; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.400 Grade A pasteurized milk—Pasteurization. Pasteurization shall be performed as described in RCW 15.36.020. [1961 c 11 § 15.36.400. Prior: 1955 c 238 § 60; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.405 Grade A pasteurized milk—Cooling. All milk and milk products received for pasteurization shall immediately be cooled in approved equipment to fifty degrees Fahrenheit or less and maintained at that temperature until pasteurized, unless they are to be pasteurized within two hours after receipt; and all pasteurized milk and milk products except those to be cultured shall be immediately cooled in approved equipment to a temperature of fifty degrees Fahrenheit or less and maintained thereat until delivery, as determined in accordance with RCW 15.36.110. [1961 c 11 § 15.36.405. Prior: 1955 c 238 § 61; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.410 Grade A pasteurized milk—Bottling. Bottling of milk or milk products shall be done at the place of pasteurization in approved mechanical equipment. [1961 c 11 § 15.36.410. Prior: 1955 c 238 § 62; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.415 Grade A milk—Overflow milk—Come-back milk. Overflow milk or milk products shall not be sold for human consumption. Come-back milk shall not be

sold or used for fluid milk or fluid cream. [1961 c 11 § 15.36.415. Prior: 1955 c 238 § 63; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.420 Grade A pasteurized milk—Capping. Capping of milk or milk products shall be done by approved mechanical equipment. Hand capping is prohibited. The cap or cover shall cover the pouring lip to at least its largest diameter. [1961 c 11 § 15.36.420. Prior: 1955 c 238 § 64; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.425 Grade A pasteurized milk—Personnel, health. The health authority or a physician authorized by him or her shall examine and take careful morbidity history of every person connected with a pasteurization plant, or about to be employed, whose work brings him or her in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he or she shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or her or by the state department of health for such examinations, and if the results justify such persons shall be barred from such employment.

Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health official may require for the purpose of determining freedom from infection. [1991 c 3 § 1; 1989 c 354 § 20; 1979 c 141 § 22; 1961 c 11 § 15.36.425. Prior: 1955 c 238 § 65; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.430 Grade A pasteurized milk—Personnel, cleanliness. All persons coming in contact with milk, milk products, containers or equipment shall wear clean, washable, light colored outer garments and shall keep their hands clean at all times while thus engaged. [1961 c 11 § 15.36.430. Prior: 1955 c 238 § 66; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.440 Grade A pasteurized milk—Vehicles. All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun, from freezing, and from contamination. All vehicles used for distribution of milk or milk products shall have the name of the distributor prominently displayed.

Milk tank cars and tank trucks shall comply with construction, cleaning, bactericidal treatment, storage, and handling requirements of RCW 15.36.365, 15.36.370, 15.36.380, 15.36.385 and 15.36.390. While containing milk or cream they shall be sealed and labeled in an approved manner. [1961 c 11 § 15.36.440. Prior: 1955 c 238 § 67; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.460 "Grade C pasteurized milk" defined. Grade C pasteurized milk is pasteurized milk which violates any of the requirements for grade A pasteurized milk. [1989 c 354 § 21; 1961 c 11 § 15.36.460. Prior: 1955 c 238 § 69; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.470 Grades of milk and milk products which may be sold. No milk or milk products shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments except grade A milk pasteurized, or grade A milk-raw, and the director may revoke the permit of any milk distributor failing to qualify for one of the above grades, or in lieu thereof may degrade his product and permit its sale during a period not exceeding thirty days or in emergencies during such longer period as he may deem necessary. [1989 c 354 § 22; 1961 c 11 § 15.36.470. Prior: 1949 c 168 § 8; Rem. Supp. 1949 § 6266-37.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.480 Reinstatement of permit—Supplementary regrading. If at any time between the regular announcements of the grades of milk or milk products, a lower grade shall become justified, in accordance with RCW 15.36.100, 15.36.110, and 15.36.120 to 15.36.460, inclusive, the director shall immediately lower the grade of such milk or milk products, and shall enforce proper labeling thereof.

Any producer or distributor of milk or milk products the grade of which has been lowered by the director, and who is properly labeling his milk and milk products, or whose permit has been suspended may at any time make application for the regrading of his products or the reinstatement of his permit.

Upon receipt of a satisfactory application, in case the lowered grade or the permit suspension was the result of violation of the bacteriological or cooling temperature standards, the director shall take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the permit on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.110.

In case the lowered grade of the applicant's product or the permit suspension was due to a violation of an item other than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with the higher grade requirements, and in case the findings justify, shall regrade the milk or milk products upward or reinstate the permit. [1961 c 11 § 15.36.480. Prior: 1949 c 168 § 9; Rem. Supp. 1949 § 6266-37a.]

15.36.490 Transferring, mixing, or dipping milk or cream—Delivery containers—Cooling—Quarantined residences. Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container to another on the street, or in any vehicle, or store, or in any place except a bottling or milk room especially used for that purpose.

Milk and milk products sold in the distributor's containers in quantities less than one gallon shall be delivered in standard milk bottles or in single-service containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries, hospitals, and similar establishments to sell or serve any milk or milk products except in the individual original container in which it was received from the distributor or from a bulk container equipped with an approved dispensing device: PROVIDED, That this requirement shall not apply to cream consumed on the premises, which may be served from the original bottle or from a dispenser approved for such service.

It shall be unlawful for any hotel, soda fountain, restaurant, grocery, hospital, or similar establishment to sell or serve any milk or milk product which has not been maintained, while in its possession, at a temperature of fifty degrees Fahrenheit or less. If milk or milk products are stored in water for cooling, the pouring lip of the container shall not be submerged.

It shall be the duty of all persons to whom milk or milk products are delivered to clean thoroughly the containers in which such milk or milk products are delivered before returning such containers. Apparatus, containers, equipment, and utensils used in the handling, storage, processing, or transporting of milk or milk products shall not be used for any other purpose without the permission of the director.

The delivery of milk or milk products to and the collection of milk or milk products containers from residences in which cases of communicable disease transmissible through milk supplies exists shall be subject to the special requirements of the health officer.

Homogenized milk or homogenized cream shall not be mixed with milk or cream which has not been homogenized if sold or offered for sale as fluid milk or cream. [1961 c 11 § 15.36.490. Prior: 1949 c 168 § 10; Rem. Supp. 1949 § 6266-38.]

15.36.500 Sale of out-of-state milk and milk products. Milk and milk products from outside the state may not be sold in the state of Washington unless produced and/or pasteurized under provisions equivalent to the requirements of this chapter: PROVIDED, That the director shall satisfy himself that the authority having jurisdiction over the production and processing is properly enforcing such provisions. [1961 c 11 § 15.36.500. Prior: 1949 c 168 § 11; Rem. Supp. 1949 § 6266-39.]

15.36.510 Dairies and milk plants constructed or altered after June 8, 1949. All dairies and milk plants from which milk or milk products are supplied which are constructed, reconstructed, or extensively altered after June 8, 1949, shall conform in their construction to the grade A requirements of this chapter. Properly prepared plans for all dairies and milk plants which are thereafter constructed, reconstructed or extensively altered shall be submitted to the director for approval before work is begun. In the case of milk plants signed approval shall be obtained from the director. [1961 c 11 § 15.36.510. Prior: 1949 c 168 § 12; Rem. Supp. 1949 § 6266-40.]

15.36.520 Dairy farm or milk plant personnel, disease—Notice. No person who is affected with any disease in a communicable form or is a carrier of such disease shall work at any dairy farm or milk plant in any capacity which brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment; and no dairy farm or milk plant shall employ in any such capacity any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. Any producer or distributor of milk or milk products upon whose dairy farm or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease shall notify the health authority immediately. [1989 c 354 § 23; 1961 c 11 § 15.36.520. Prior: 1949 c 168 § 13; Rem. Supp. 1949 § 6266-41.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.530 Personnel, health—Procedure when infection suspected. When suspicion arises as to the possibility of transmission of infection from any person concerned with the handling of milk or milk products, the health officer is authorized to require any or all of the following measures: (1) The immediate exclusion of the milk supply concerned from distribution and use, (2) the immediate exclusion of that person from milk handling, (3) adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges. [1961 c 11 § 15.36.530. Prior: 1949 c 168 § 14; Rem. Supp. 1949 § 6266-42.]

15.36.540 State law enforced in accordance with federal standards. Except as otherwise provided in this chapter, this law shall be enforced by the director in accordance with the interpretation contained in the food and drug administration pasteurized milk ordinance: PROVIDED, That the director may promulgate rules covering any standard set forth in the pasteurized milk ordinance if the rules are consistent with the pasteurized milk ordinance except the standards may be more stringent based upon current industry or public health information for the enforcement of this chapter whenever he determines that any such rules are necessary to carry out the purposes of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600. [1989 c 354 § 24; 1969 ex.s. c 102 § 6; 1961 c 11 § 15.36.540. Prior: 1949 c 168 § 15; Rem. Supp. 1949 § 6266-44.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.550 Rules, regulations, and orders. The director shall have the power and duty to adopt, issue and promulgate from time to time necessary rules, regulations and orders for the enforcement of this chapter. [1989 c 354 § 25; 1979 c 141 § 23; 1961 c 11 § 15.36.550. Prior: 1949 c 168 § 16; Rem. Supp. 1949 § 6266-44.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.36.580 Producers or distributors—Protest of enforcement. In case of a written protest from any fluid milk producer or fluid milk distributor concerning the enforcement of any provisions of this chapter or of any rules and regulations thereunder, the director, or an administrative law judge within ten days after receipt of such protest and after five days written notice thereof to the party against whom the protest is made, shall hold a summary hearing in the county where either the party protesting or protested against resides, upon the completion of which the director or an administrative law judge shall make such written findings of fact and order as the circumstances may warrant: PROVIDED, That if the protest originates with a producer, the hearings shall be held in the county where the protesting producer resides. Such findings and order shall be final and conclusive upon all parties from and after their effective date, which date shall be five days after being signed and deposited postage prepaid in the United States mails addressed to the last known address of all said parties. An appeal from such findings or order may be taken in the manner provided under chapter 34.05 RCW. [1989 c 354 § 26; 1987 c 202 § 175; 1981 c 67 § 17; 1961 c 11 § 15.36.580. Prior: 1949 c 168 § 18, part; Rem. Supp. 1949 § 6266-46, part.]

Severability—1989 c 354: See note following RCW 15.32.010.

Intent—1987 c 202: See note following RCW 2.04.190.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

15.36.590 Penalty. Any person who shall violate or fail to comply with the provisions of this chapter or the rules, regulations or orders, issued under the authority of this chapter shall be guilty of a misdemeanor. [1961 c 11 § 15.36.590. Prior: 1949 c 168 § 19; Rem. Supp. 1949 § 6266-48.]

15.36.595 Violations of standards for component parts of fluid dairy products—Civil penalty—Procedure. (1) The director of agriculture shall adopt rules imposing a civil penalty for violations of the standards for component parts of fluid dairy products which are established by RCW 15.36.030 or adopted pursuant to RCW 69.04.398. The penalty shall not exceed ten thousand dollars and shall be such as is necessary to achieve proper enforcement of the standards. The rules shall be adopted before January 1, 1987, and shall become effective on July 1, 1987.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.05 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.05 RCW. Tests performed for the component parts of milk products by a state laboratory of a milk sample collected by a department official shall be admitted as prima facie evidence of the amounts of milk components in the product.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department.

(4) All penalties received or recovered from violations of this section shall be remitted by the violator to the department and deposited in the revolving fund of the Washington state dairy products commission. One-half of the funds received shall be used for purposes of education with the remainder one-half to be used for dairy processing or marketing research, or both. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department. [1989 c 175 § 49; 1986 c 203 § 19.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1986 c 203: See note following RCW 15.04.100.

15.36.600 Violations may be enjoined. The director may bring an action to enjoin the violation of any provision of chapters 15.36 and 15.38 RCW or any rule adopted thereunder in the superior court of the county in which the defendant resides or maintains his principal place of business, notwithstanding any other remedy at law. [1969 ex.s. c 102 § 4.]

15.36.900 Chapter to be construed as cumulative. Except as expressly provided, nothing in this chapter shall be construed as effecting or being intended to effect a repeal of chapter 15.32 RCW, or of any part or provision of such chapter 15.32 RCW, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic, or thing which is also contained in, covered in or effected by chapter 15.32 RCW, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers, and duties herein prescribed shall be construed to be additional to those prescribed in chapter 15.32 RCW and not substitutions therefor. [1961 c 11 § 15.36.900. Prior: 1949 c 168 § 23; Rem. Supp. 1949 § 6266-49. Formerly RCW 15.36.600.]

Chapter 15.37

MILK AND MILK PRODUCTS FOR ANIMAL FOOD

Sections

15.37.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be. [1961 c 285 § 1.]

15.37.020 Enforcement of chapter—Rules, subject to administrative procedure act. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 285 § 2.]

15.37.030 Minimum conditions for sale, etc.—When license required—Expiration date of license. It shall be unlawful for any person to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk, for animal food consumption, which does not meet, or has not been produced and handled under conditions prescribed for grade A milk as provided in chapter 15.36 RCW as enacted or hereafter amended, without first obtaining an annual license from the director which shall expire on June 30th following the date of issuance unless revoked prior thereto by the director for cause. [1961 c 285 § 3.]

15.37.040 Application, issuance of license. Application for a license shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is a receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notice of all kinds.

(5) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required fee. [1961 c 285 § 4.]

15.37.050 License fee on application. The application for an annual license to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk for animal food consumption shall be accompanied by a license fee of twenty-five dollars. [1961 c 285 § 5.]

15.37.060 Penalty for delinquency on renewal of license. If an application for renewal of a license provided for in RCW 15.37.030 is not filed prior to July 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he has not sold, offered for sale, held for sale, or advertised for sale, milk, cream, or skim milk for animal food consumption subsequent to the expiration of his prior license. [1961 c c 285 § 6.]

15.37.070 Denial, suspension, revocation of license. The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.37.030 subsequent to a hearing in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1961 c 285 § 7.]

15.37.080 Denial, suspension, revocation of license—Hearings subject to Administrative Procedure Act. All hearings for a denial, suspension, or revocation of a license provided for in RCW 15.37.030 shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 50; 1961 c 285 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

15.37.090 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privileges granted by a license issued under the provisions of this chapter. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 285 § 9.]

15.37.100 Coloring of milk in containers, when required. It shall be unlawful for any person to sell, offer for sale, hold for sale, advertise for sale, trade, barter, or to give as an inducement for the sale of another product, any milk, cream, or skim milk, for animal food consumption which does not meet, or has not been produced under conditions prescribed for grade A milk, as prescribed in

chapter 15.36 RCW as enacted or hereafter amended and rules adopted thereunder, and the applicable provisions of chapter 69.04 RCW (the Food, Drug and Cosmetic Act) as enacted and hereafter amended and rules adopted thereunder, in containers provided either by the vendor or vendee and which are capable of holding less than twenty liquid quarts, unless such milk, cream, or skim milk has been decharacterized with a color prescribed by the director which will not affect its nutritive value for animal food. [1961 c 285 § 10.]

15.37.110 Labels on containers—Contents. It shall be unlawful to sell, offer for sale, hold for sale, trade, barter, or to offer as an inducement for the sale of another product, milk, cream, or skim milk subject to the provisions of this chapter in containers which are not labeled in a conspicuous location readily visible to any person handling such containers with the following:

(1) The name and address of the producer or distributor in letters not less than one-fourth inch in size.

(2) The name of the contents in letters not less than one-fourth inch in size.

(3) The words "not for human consumption" in letters at least one-half inch in size.

(4) The words "decharacterized with harmless food coloring" in letters not less than one-fourth inch in size. [1961 c 285 § 11.]

15.37.120 Entry on premises. The director or his duly authorized representative may enter, during reasonable business hours, any premise where milk, cream, or skim milk subject to the provisions of this chapter is produced, handled, distributed, sold, offered for sale, held for sale, or used for the inducement of the sale of another product to determine if such milk, cream, or skim milk has been properly decharacterized as provided in RCW 15.37.100 or rules adopted hereunder. No person shall interfere with the director or his duly authorized representative when he is performing or carrying out the duties imposed on him by this chapter or rules adopted hereunder. [1961 c 285 § 12.]

15.37.130 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of any other remedy at law. [1961 c 285 § 13.]

15.37.140 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 285 § 14.]

15.37.150 Penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1961 c 285 § 15.]

15.37.900 Severability—1961 c 285. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 285 § 16.]

Chapter 15.38
FILLED DAIRY PRODUCTS

Sections

Adoption of rules concerning: RCW 15.36.011.

15.38.001 Declaration of purpose. Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products creates a condition conducive to substitution, confusion, deception, and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this chapter to correct and eliminate the condition above referred to; to protect the public from confusion, fraud and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods. [1961 c 11 § 15.38.001. Prior: 1951 c 20 § 1.]

15.38.010 Definitions and exclusions. Whenever used in this chapter:

(1) The term "person" includes individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices or arrangements.

(2) The term "filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to, milk, cream, sour cream, skimmed milk, ice cream, whipped cream, flavored milk or skim-milk, dried or powdered milk, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk: PROVIDED, HOWEVER, That this term shall not be construed to mean or include:

(a) Oleomargarine;

(b) Any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) Any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such

product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used;

(d) Any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed one one-hundredths of one percent of the weight of the finished dairy product;

(e) Any cheese product or cheese; or

(f) Any cream sauce added to processed vegetables.

(3) The term "intrastate commerce" means any and all commerce within the state of Washington subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1979 c 154 § 21; 1961 c 11 § 15.38.010. Prior: 1951 c 20 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.38.020 Filled dairy products prohibited. (1) It shall be unlawful in intrastate commerce for any person to manufacture, sell, exchange, purvey, transport or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product;

(2) It shall be unlawful for any person owning or operating a bakery, confectionery shop, factory or other place where food products are prepared or manufactured for sale, exchange or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared;

(3) It shall be unlawful in intrastate commerce for any person knowingly to sell, exchange, purvey, transport or possess any food product in which any filled dairy product is an ingredient. [1961 c 11 § 15.38.020. Prior: 1951 c 20 § 3.]

15.38.030 Duties of director of agriculture. The director of agriculture is authorized and directed:

(1) To administer and supervise the enforcement of this chapter;

(2) To provide for such periodic inspections and investigations as he may deem necessary to disclose violations;

(3) To receive and provide for the investigation of complaints;

(4) To provide for the institution and prosecution of civil or criminal actions, or both. [1961 c 11 § 15.38.030. Prior: 1951 c 20 § 5.]

15.38.040 Injunction—Seizure—Products deemed adulterated. The provisions of this chapter may be enforced by injunction brought by any private person, firm, or corporation or by a municipal corporation or agent or subdivision thereof, in any court having jurisdiction to grant injunctive relief.

Filled dairy products illegally held or otherwise involved in a violation of this chapter shall be subject to seizure and disposition in accordance with an appropriate court order.

In addition, all filled dairy products as defined herein and all food products containing filled dairy products as an ingredient are hereby declared to be adulterated for all purposes of law including all the purposes of the Washington uniform food, drug and cosmetic act, RCW 69.04.001 to 69.04.870, inclusive. [1961 c 11 § 15.38.040. Prior: 1951 c 20 § 6.]

15.38.045 Violations may be enjoined. See RCW 15.36.600.

15.38.050 Penalties. Any person who shall violate any of the provisions of this chapter, and any officer, agent or employee thereof who directs or knowingly permits such violation or who aids or assists therein, shall, upon conviction thereof, be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars: PROVIDED, That if such violation is committed after a previous conviction of such person hereunder has become final, such person shall be guilty of a gross misdemeanor and shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or to imprisonment for not more than ninety days, or both. Each separate violation shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey the provisions of this chapter, each day of continuance of such failure or neglect shall be deemed a separate offense. [1961 c 11 § 15.38.050. Prior: 1951 c 20 § 4.]

Chapter 15.40
OLEOMARGARINE—CONSUMER PROTECTION
(Formerly: Oleomargarine—1949 act)

Sections

15.40.010 Definitions. The term "oleomargarine" as used in this chapter includes:

(1) All substances, mixtures and compounds known as oleomargarine, margarine, oleo or butterine;

(2) All substances, mixtures and compounds which have a consistency similar to that of butter and which contains any edible oils or fats other than milk fat, if (a) made in imitation or semblance of butter, or purporting to be butter or a butter substitute; or (b) commonly used, or intended for common use, in place of or as a substitute for butter; or (c) churned, emulsified or mixed in cream, milk, skim milk, buttermilk, water or other liquid and containing moisture in excess of one percent and commonly used, or suitable for common use, as a substitute for butter.

For the purposes of this chapter "yellow oleomargarine" is oleomargarine as defined in this section, having a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, measured in terms of the Lovibond tintometer scale or the equivalent of such measurement when the Lovibond tintometer is read under conditions similar to those established by the United States bureau of internal revenue. [1961 c 11 § 15.40.010. Prior: 1949 c 13 § 1; Rem. Supp. 1949 § 6248-1.]

15.40.030 Advertising of oleomargarine—Dairy terms prohibited. It shall be unlawful in connection with

the labeling, selling, or advertising of oleomargarine to use dairy terms, or words or designs commonly associated with dairying or dairy products, except to the extent that such words or terms are necessary to meet legal requirements for labeling. [1961 c 11 § 15.40.030. Prior: 1949 c 13 § 2(b); Rem. Supp. 1949 § 6248-2(b).]

15.40.040 Enforcement—Powers and duties of director of agriculture. The director is authorized and directed to administer and supervise the enforcement of this chapter; to prescribe rules and regulations to carry out its purposes; to provide for such periodic inspections and investigations as he may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions, or both. The provisions of this chapter and the rules and regulations issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and yellow oleomargarine illegally held or otherwise involved in a violation of this chapter or of said rules and regulations shall be subject to seizure and disposition in accordance with an order of court. [1961 c 11 § 15.40.040. Prior: 1949 c 13 § 3; Rem. Supp. 1949 § 6248-3.]

15.40.050 Penalty for violations. Any person, firm, or corporation that violates any of the provisions of this chapter, or of the rules and regulations issued in connection therewith, and any officer, agent, or employee thereof who directs or knowingly permits such violation, or who aids or assists therein, shall be guilty of a misdemeanor. [1961 c 11 § 15.40.050. Prior: 1949 c 13 § 4; Rem. Supp. 1949 § 6248-4.]

15.40.900 Preamble. Yellow oleomargarine resembles butter so closely that it lends itself readily to substitution for or confusion with butter and in many cases cannot be distinguished from butter by the ordinary consumer. The manufacture, sale or serving of yellow oleomargarine creates a condition conducive to substitution, confusion, deception and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state.

It is hereby declared to be the purpose of this chapter to correct and eliminate the condition above referred to, protect the public from confusion, fraud and deception, prohibit practices inimical to the general welfare, and promote the orderly and fair marketing of essential foods, without an additional tax burden. [1961 c 11 § 15.40.900. Prior: 1949 c 13 Preamble; no RRS.]

Chapter 15.41
YELLOW MARGARINE—PROHIBITION REPEALED
(Formerly: Oleomargarine—1953 act)

Sections

15.41.010 Declaration of purpose. The purpose of this chapter is to legalize the manufacture, transportation, handling, possession, sale, use or serving of yellow oleomargarine. The term oleomargarine shall have the same meaning as given in RCW 15.40.010. [1961 c 11 § 15.41.010. Prior: 1953 c 1 § 1 (Initiative Measure No. 180, approved November 4, 1952).]

15.41.020 Repeal of prohibition against manufacture, transportation, sale, etc., of yellow oleomargarine. Section 15.40.020, RCW, as derived from section 2(a), chapter 13, Laws of 1949 is hereby repealed. [1961 c 11 § 15.41.020. Prior: 1953 c 1 § 2 (Initiative Measure No. 180, approved November 4, 1952).]

Reviser's note: The repealed section, RCW 15.40.020, read as follows: "The manufacture, transportation, handling, possession, sale, use or serving of yellow margarine is hereby prohibited: PROVIDED, That nothing herein contained shall be construed to prohibit the use of yellow oleomargarine in private homes."

Chapter 15.44
DAIRY PRODUCTS COMMISSION

Sections

General obligation bonds: Chapter 43.991 RCW.

15.44.010 Definitions. As used in this chapter:

"Commission" means the Washington state dairy products commission;

To "ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human consumption or industrial or medicinal uses;

"Handler" means one who purchases milk, cream, or skimmed milk for processing, manufacturing, sale, or distribution;

"Dealer" means one who handles, ships, buys, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products;

"Processor" means a person who uses milk or cream for canning, drying, manufacturing, preparing, or packaging or for use in producing or manufacturing any product therefrom;

"Producer" means a person who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses;

"Maximum authorized assessment rate" means the level of assessment most recently approved by a referendum of producers;

"Current level of assessment" means the level of assessment paid by the producer as set by the commission which cannot exceed the maximum authorized assessment rate. [1985 c 261 § 17; 1979 ex.s. c 238 § 1; 1961 c 11 § 15.44.010. Prior: 1939 c 219 § 2; RRS § 6266-2.]

Severability—1979 ex.s. c 238: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 238 § 27.]

15.44.020 Commission created—Composition. There is hereby created a Washington state dairy products commission to be thus known and designated: PROVIDED, That the commission may take actions under the name, "the dairy farmers of Washington". The commission shall be composed of not more than ten members. There shall be one member from each district who shall be a practical producer of dairy products to be elected by such producers, one member shall be a dealer, and one member shall be a producer who also acts as a dealer, and such dealer and producer who acts as a dealer shall be appointed by the director of agriculture, and the director of agriculture shall be an ex officio member without vote. [1979 ex.s. c 238 § 2; 1975 1st ex.s. c 136 § 1; 1965 ex.s. c 44 § 2; 1961 c 11 § 15.44.020. Prior: 1959 c 163 § 2; prior: (i) 1939 c 219 § 3, part; RRS § 6266-3, part. (ii) 1939 c 219 § 4, part; RRS § 6266-4, part.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.027 Commission districts and boundaries. The commission shall delete, combine, revise, amend, or modify in any manner commission districts and boundaries by regulation as required and in accordance with the intent and provisions of this section. Commission districts established by statute prior to September 8, 1975 shall remain in effect until superseded by such regulations.

The boundaries of the commission districts shall be maintained in a manner that assures each producer a representation in the commission which is reasonably equal with the representation afforded all other producers by their commission members.

The commission shall, when requested in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW as enacted or hereafter amended, or on its own initiative, hold hearings to determine if new boundaries for each commission district should be established in order to afford each producer a reasonably equal representation in the commission, and if the commission so finds it shall change the boundaries of said commission districts to carry out the proper reapportionment of producer representation on the commission: PROVIDED, That the requirement of this section for reasonable equal representation of each producer on the commission need not require an equality of representation when the commission districts east of the crest of the Cascade mountains are compared to the commission districts west of the crest of the Cascade mountains: PROVIDED FURTHER, That the area east of the crest of the Cascade mountains shall comprise not less than two commission districts.

The commission may in carrying out this reapportionment directive reduce the number of districts presently provided by prior law, whenever it is in the best interest of the producers and if such change would maintain reasonable apportionment for each historical production or marketing area: PROVIDED, That each elected commission member whose district may be consolidated with another district shall be allowed to serve out his term of office.

If the commission fails to carry out its directive as set forth herein for equal representation of each producer on the commission the director of agriculture may upon request by ten producers institute a hearing to determine if there is reasonably equal representation for each producer on the commission. If the director of agriculture finds that such reasonably equal representation is lacking, he then shall realign the district boundaries in a manner which will provide proper representation on the commission for each producer. [1975 1st ex.s. c 136 § 7.]

15.44.030 Member qualifications. Each of the producer members of the commission shall:

(1) Be a citizen and resident of this state and the district which he represents; and

(2) Be and for the five years last preceding his election have been actually engaged in producing dairy products within this state. These qualifications must continue during each member's term of office.

The dealer member shall be actively engaged as a dealer in dairy products or employed in a dealer capacity as an officer or employee at management level in a dairy products organization. [1975 1st ex.s. c 136 § 2; 1965 ex.s. c 44 § 4; 1961 c 11 § 15.44.030. Prior: 1959 c 163 § 4; prior: 1939 c 219 § 3, part; RRS § 6266-3, part.]

15.44.032 Terms—Vacancies. The regular term of office of each producer member of the commission shall be three years. Commission members shall be first nominated and elected in 1966 in the manner set forth in RCW 15.44.033 and shall take office as soon as they are qualified. However, expiration of the term of the respective commission members first elected in 1966 shall be as follows:

(1) District I and II on July 1, 1967;

(2) District III and IV on July 1, 1968; and

(3) District V, VI and VII on July 1, 1969.

The respective terms shall end on July 1st of each third year thereafter. Any vacancies that occur on the commission shall be filled by appointment by the other members of the commission, and such appointee shall hold office for the remainder of the term for which he is appointed to fill, so that commission memberships shall be on a uniform staggered basis.

The term of office of the first dealer appointed by the director shall expire July 1, 1977, and the term of office of the first producer who also acts as a dealer appointed by the director shall expire on July 1, 1978. The term of office of each dealer and each producer who also acts as a dealer shall be three years or until such time as a successor is duly appointed. Any vacancy for a dealer or a producer who also acts as a dealer shall be forthwith filled by the director. The director, in making any appointments set forth herein, may consider lists of nominees supplied him by dealers or producers also acting as dealers. [1975 1st ex.s. c 136 § 3; 1965 ex.s. c 44 § 5; 1961 c 11 § 15.44.032. Prior: 1959 c 163 § 5.]

15.44.033 Nomination and election procedure. Producer members of the commission shall be nominated and elected by producers within the district that such producer members represent in the year in which a commission member's term shall expire. Such producer members receiving the largest number of the votes cast in the respective districts which they represent shall be elected. The election shall be by secret mail ballot and under the supervision of the director.

Nomination for candidates to be elected to the commission shall be conducted by mail by the director. Such nomination forms shall be mailed by the director to each producer in a district where a vacancy is about to occur. Such mailing shall be made on or after April 1st, but not later than April 10th of the year the commission vacancy will occur. The nomination form shall provide for the name of the producer being nominated and the names of five producers nominating such nominee. The producers nominating such nominee shall affix their signatures to such form and shall further attest that the said nominee meets the qualifications for a producer member to serve on the commission and that he will be willing to serve on the commission if elected.

All nominations as provided for herein shall be returned to the director by April 30th, and the director shall not accept any nomination postmarked later than midnight April 30th, nor place the candidate thereon on the election ballot.

Ballots for electing members to the commission will be mailed by the director to all eligible producers no later than May 15th, in districts where elections are to be held and such ballots to be valid shall be returned postmarked no later than May 31st of the year mailed, to the director in Olympia.

Whenever producers fail to file any nominating petitions, the director shall nominate at least two, but not more than three, qualified producers and place their names on the secret mail election ballot as nominees: PROVIDED, That any qualified producer may be elected by a write-in ballot, even though said producer's name was not placed in nomination for such election. [1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

Severability—1967 c 240: See note following RCW 43.23.010.

15.44.035 Producer lists. The commission shall prior to each election, in sufficient time to satisfy the requirements of RCW 15.44.033, furnish the director with a list of all producers within the district for which the election is being held. The commission shall require each dealer and shipper in addition to the information required under RCW 15.44.110 to furnish the commission with a list of names of producers whose milk they handle. Any producer may on his own motion file his name with the commission for the purpose of receiving notice of election. [1965 ex.s. c 44 § 7.]

15.44.037 Reimbursement of election costs. The commission shall reimburse the director for the necessary costs of conducting elections under the provisions of this chapter. [1965 ex.s. c 44 § 8.]

15.44.038 Quorum—Compensation—Travel expenses. A majority of the commission members shall constitute a quorum for the transaction of all business and the performance of all duties of the commission. Each member shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses at the rates allowed by RCW 43.03.050 and 43.03.060. [1984 c 287 § 15; 1975-'76 2nd ex.s. c 34 § 15; 1975 1st ex.s. c 7 § 12; 1961 c 11 § 15.44.038. Prior: 1959 c 163 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.44.040 Copies of records as evidence. Copies of the proceedings, records and acts of the commission, when certified by the secretary, shall be admissible in any court and be prima facie evidence of the truth of the statements therein contained. [1961 c 11 § 15.44.040. Prior: 1959 c 163 § 9; prior: 1939 c 219 § 4, part; RRS § 6266-4, part.]

15.44.050 Manager—Secretary-treasurer—Treasurer's bond. The commission shall elect a manager, who is not a member, and fix his compensation; and shall appoint a secretary-treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of one hundred thousand dollars, executed by a surety company authorized to do business in the state, in favor of the state and the commission, conditioned for the faithful performance of his duties and strict accounting of all funds to the commission. [1979 ex.s. c 238 § 3; 1961 c 11 § 15.44.050. Prior: (i) 1939 c 219 § 5; RRS § 6266-5. (ii) 1939 c 219 § 6; RRS § 6266-6.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.060 Powers and duties. The commission shall have the power and duty to:

(1) Elect a chairman and such other officers as it deems advisable, and adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers, which shall have the effect of law when not inconsistent with existing laws;

(2) Administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to effectuate the purpose hereof;

(3) Employ and discharge advertising counsel, advertising agents, and such attorneys, agents, and employees as it deems necessary, and prescribe their duties and powers and fix their compensation;

(4) Establish offices, incur expenses, enter into contracts, and create such liabilities as are reasonable and proper for the proper administration of this chapter;

(5) Investigate and prosecute violations of this chapter;

(6) Conduct scientific research designed to improve milk production, quality, transportation, processing, and distribution and to develop and discover uses for products of milk and its derivatives;

(7) Make in its name such advertising contracts and other agreements as are necessary to promote the sale of dairy products on either a state, national, or foreign basis;

(8) Keep accurate records of all its dealings, which shall be open to public inspection and audit by the regular agencies of the state; and

(9) Conduct the necessary research to develop more efficient and equitable methods of marketing dairy products, and enter upon, singly or in participation with others, the promotion and development of state, national, or foreign markets. [1979 ex.s. c 238 § 4; 1961 c 11 § 15.44.060. Prior: 1959 c 163 § 13; 1939 c 219 § 8; RRS § 6266-8.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.070 Rules, regulations and orders, publication. Every rule, regulation, or order made by the commission shall be filed with the director and published in two legal newspapers, one east of the Cascade mountains and one west thereof, within ten days after it is promulgated, and shall become effective pursuant to the provisions of RCW 34.05.380. [1975 1st ex.s. c 7 § 39; 1961 c 11 § 15.44.070. Prior: 1939 c 219 § 18; RRS § 6266-18.]

15.44.080 Assessments on milk and cream—Amounts—Increases—Producer referendum. (1) There is hereby levied upon all milk produced in this state an assessment of 0.6% of class I price for 3.5% butter fat milk as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; and

(2) Subject to approval by a producer referendum as provided in this section, the commission shall have the further power and duty to increase the amount of the maximum authorized assessment rate to be levied upon either milk or cream according to the necessities required to effectuate the stated purpose of the commission.

In determining such necessities, the commission shall consider one or more of the following:

(a) The necessities of—

(i) developing better and more efficient methods of marketing milk and related dairy products;

(ii) aiding dairy producers in preventing economic waste in the marketing of their commodities;

(iii) developing and engaging in research for developing better and more efficient production, marketing and utilization of agricultural products;

(iv) establishing orderly marketing of dairy products;

(v) providing for uniform grading and proper preparation of dairy products for market;

(vi) providing methods and means including but not limited to public relations and promotion, for the maintenance of present markets, for development of new or larger markets, both domestic and foreign, for dairy products produced within this state, and for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(vii) restoring and maintaining adequate purchasing power for dairy producers of this state; and

(viii) protecting the interest of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality;

(b) The extent and probable cost of required research and market promotion and advertising;

(c) The extent of public convenience, interest and necessity; and

(d) The probable revenue from the assessment as a consequence of its being revised.

This section shall apply where milk or cream is marketed either in bulk or package. However, this section shall not apply to milk or cream used upon the farm or in the household where produced.

The increase in the maximum authorized assessment rate to be charged producers on milk and cream provided for in this section shall not become effective until approved by fifty-one percent of the producers voting in a referendum conducted by the commission.

The referendum for approval of any increase in the maximum authorized assessment rate provided for in this section shall be by secret mail ballot furnished to all producers paying assessments to the commission. The commission shall furnish ballots to producers at least ten days in advance of the day it has set for concluding the referendum and counting the ballots. Any interested producer may be present at such time the commission counts said ballots. [1985 c 261 § 18; 1973 1st ex.s. c 41 § 1; 1969 c 60 § 1; 1965 ex.s. c 44 § 1; 1961 c 11 § 15.44.080. Prior: 1959 c 163 § 11; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

15.44.085 Assessments on class I or class II milk. There is hereby levied on every hundredweight of class I or class II milk, as defined in RCW 15.44.087, sold by a dealer, including any milk sold by a producer who acts as a dealer, an assessment of:

(1) Five-eighths of one cent per hundredweight. Such assessment shall be in addition to the producer assessment paid by any producer who also acts as a dealer.

(2) Any additional assessment, within the power and duty of the commission to levy, such that the total assessment shall not exceed one cent per hundredweight, as required to effectuate the purpose of this section.

Such assessment may be increased by approval of dealers and producers who also act as dealers, subject to the standards set forth in chapter 15.44 RCW for increasing or decreasing assessments. The funds derived from such assessment shall be used for educational programs in institutions of learning and the sum of such funds derived annually from said dealers and producers who act as dealers shall be matched by assessments derived from producers for the purpose of funding said educational purposes in institutions of learning by an amount not less than the moneys collected from dealers and producers who act as dealers. [1979 ex.s. c 238 § 5; 1975 1st ex.s. c 136 § 5.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.087 Class I and class II milk defined. For the purpose of RCW 15.44.085, class I and class II milk sold means milk from cows produced by a producer as defined in RCW 15.44.010 and utilized as follows:

(1) Class I milk shall be all skim milk and butterfat:

(a) Sold in the form of fluid milk product subject to the following limitations and exceptions:

(i) Any products fortified with added nonfat milk solids shall be class I in an amount equal only to the weight of an equal volume of like unmodified product of the same butterfat content.

(ii) Fluid milk products in concentrated form shall be class I in an amount equal to the skim milk and butterfat used to produce the quantity of such products sold.

(iii) Products classified as class II pursuant to subsection (2) of this section are excepted.

(b) Packaged fluid milk products in inventory at the end of the month.

(2) Class II milk shall be all skim milk and butterfat:

(a) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, or starter; or

(b) Any milk or milk product, sterilized and either (i) packaged in hermetically sealed metal, plastic, foil, paper, or glass containers and used to produce condensed milk and condensed skim milk, or (ii) in fluid milk products disposed of in bulk to commercial food processing establishments or producer milk sold to a commercial food processing establishment. [1979 ex.s. c 238 § 6; 1975 1st ex.s. c 136 § 6.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.090 Collection of assessments—Lien. All assessments shall be collected by the first dealer and deducted from the amount due the producer, and all moneys so collected shall be paid to the treasurer of the commission on or before the twentieth day of the succeeding month for the previous month's collections, and deposited by him in banks designated by the commission to the credit of the commission fund. If a dealer or a producer who acts as a dealer fails to remit any assessments, or fails to make deductions for assessments, such sum shall, in addition to penalties provided in this chapter, be a lien on any property owned by him, and shall be reported to the county auditor by the commission, supported by proper and conclusive evidence, and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes. [1979 ex.s. c 238 § 7; 1975 1st ex.s. c 136 § 4; 1961 c 11 § 15.44.090. Prior: 1959 c 163 § 12; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.100 Records of dealers, shippers—Preservation—Inspection. Each dealer or shipper shall keep a complete and accurate record of all milk or cream handled by him. The record shall be in such form and contain such information as the commission shall prescribe, and shall be preserved for a period of two years, and be submitted for inspection at any time upon request of the commission or its agent. [1961 c 11 § 15.44.100. Prior: 1959 c 163 § 14; 1939 c 219 § 10; RRS § 6266-10.]

15.44.110 Reports of dealers, shippers, to commission. Each dealer and shipper shall at such times as by rule or regulation required, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of dairy products handled, processed, manufactured, delivered, and shipped, and the quantity of all milk and cream delivered to or purchased by such person from the various producers of dairy products or their agents in the state during the period or periods prescribed by the commission. [1961 c 11 § 15.44.110. Prior: 1959 c 163 § 15; 1939 c 219 § 11; RRS § 6266-11.]

15.44.130 Research, advertising, educational campaign—Increase or decrease of assessments—Procedure. (1) In order to adequately advertise and market Washington dairy products in the domestic, national and foreign markets, and to make such advertising and marketing research and development as extensive as public interest and necessity require, and to put into force and effect the policy of this chapter 15.44 RCW, the commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign, and keep such research, advertising and education as continuous as the production, sales, and market conditions reasonably require.

(2) The commission shall investigate and ascertain the needs of dairy products and producers, the conditions of the markets, and the extent to which public convenience and necessity require advertising and research to be conducted.

(3)(a) The commission may decrease or increase the current level of assessment provided for in RCW 15.44.080 following a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW: PROVIDED, That the current level of assessment established in this manner shall not exceed the maximum authorized assessment rate established by producers in the most recent referendum.

(b) Upon receipt of a petition bearing the names of twenty percent of the producers requesting a reduction in the current level of assessment, the commission shall hold a hearing in accordance with chapter 34.05 RCW to receive producer testimony. After considering the testimony of the producer, the commission may adjust the current level of assessment. [1985 c 261 § 19; 1969 c 60 § 2; 1961 c 11 § 15.44.130. Prior: 1959 c 163 § 17; 1949 c 185 § 2; 1939 c 219 § 13; Rem. Supp. 1949 § 6266-13.]

15.44.135 Promotional printing and literature—Contracts. Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

15.44.140 Authority to enter and inspect records. The commission through its agents may inspect the premises and records of any carrier, handler, dealer, manufacturer, processor, or distributor of dairy products for the purpose of enforcing this chapter. [1961 c 11 § 15.44.140. Prior: 1939 c 219 § 19; RRS § 6266-19.]

15.44.150 Nonliability for commission acts. The state shall not be liable for the acts or on the contracts of the commission, nor shall any member or employee of the commission be liable on its contracts.

All persons employed or contracting under this chapter shall be limited to, and all salaries, expenses and liabilities incurred by the commission shall be payable only from the funds collected hereunder. [1961 c 11 § 15.44.150. Prior: 1939 c 219 § 7; RRS § 6266-7.]

15.44.160 Enforcement of chapter. All state and county law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.44.160. Prior: 1939 c 219 § 16; RRS § 6266-16.]

15.44.170 Penalty. Whoever violates or aids in the violation of the provisions of this chapter shall be guilty of a gross misdemeanor. [1961 c 11 § 15.44.170. Prior: 1939 c 219 § 14; RRS § 6266-14.]

15.44.180 Jurisdiction of courts. The superior courts are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof. [1961 c 11 § 15.44.180. Prior: 1939 c 219 § 15; RRS 6266-15.]

15.44.900 Purpose of chapter. This chapter is passed:

(1) In the exercise of the power of the state to protect the public health, to provide for the economic development of the state, to prevent fraudulent practices, to promote the welfare of the state, and stabilize the dairy industry by increasing consumption of dairy products within the state and nation;

(2) Because the dairy products produced in Washington comprise one of the major agricultural crops of Washington, and that therefore the business of marketing and distributing such crop and the expansion of its markets is affected with the public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington dairy products in domestic and national markets;

(4) Because it is necessary to promote the knowledge of health giving qualities, food and dietetic value of the dairy products of the nation and Washington dairy products in particular, and to expanded development of the dairy industry;

(5) Because Washington dairy products are handicapped by eastbound freight rates, therefore the quality of these products must be impressed upon the consumers of the nation, in order that these handicaps may be overcome;

(6) Because the stabilizing of the dairy industry, the enlargement of its markets, and the increased consumption of dairy products are necessary to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment, and to provide for higher wage scales for agricultural labor and maintenance of our high standard of living;

(7) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only dairy products of the highest standards of quality, the methods and care used in their preparation for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of marketing and distribution to the extent that the spread between cost to consumer and the amount received by the producer will be reduced to the minimum absolutely necessary;

(8) To establish a permanent organization to assist and promote the supplying of under-nourished and under-privileged children with the necessary milk and milk products to insure the development of healthy bodies and minds in order that they may develop into useful citizens of the state and nation in the future;

(9) To protect the general public by educating it in reference to the various market classifications of dairy products, the food value and industrial and medicinal uses thereof. [1961 c 11 § 15.44.900. Prior: 1939 c 219 § 1; RRS § 6266-1.]

15.44.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.44.910. Prior: 1939 c 219 § 17, part; RRS § 6266-17, part.]

Chapter 15.48
SEED BAILMENT CONTRACTS

Sections

Agricultural and vegetable seeds: Chapter 15.49 RCW.

Liens, crop: Chapter 60.11 RCW.

15.48.270 Definitions. As used in this chapter:

(1) "Seed bailment contract" means any bailment contract for the increase of agricultural seeds where the bailor retains title to seed, seed stock, plant life and the seed crop resulting therefrom.

(2) "Bailee" is any tenant farmer or landowner or both, who, for an agreed compensation agrees to plant agricultural seeds furnished by the bailor and to care for, cultivate, harvest and deliver to the bailor the seed resulting therefrom.

(3) "Bailor" is any seed contractor who delivers agricultural seed to a bailee under the terms of a seed bailment contract which requires the bailee to plant, care for, cultivate, harvest and deliver the resultant seed crop to the bailor and requires the bailor to pay the bailee the amount of compensation agreed upon in the contract for the bailees' services in producing the seed. [1967 c 114 § 14.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor. Seed bailment contracts for the increase of agricultural seeds shall not create a security interest under the terms of the Uniform Commercial Code, chapter 62A.9 RCW. No filing,

recording or notice of a seed bailment contract shall be required under any of the laws of the state to establish, during the term of a seed bailment contract the validity of any such contracts, nor to establish and confirm in the bailor the title to all seed, seed stock, plant life and the resulting seed crop thereof grown or produced by the bailee under the terms of a bailment contract. [1967 c 114 § 15.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens. All payments of money required by the terms of a seed bailment contract to be made by a bailor to a bailee shall be subject to security interests perfected as required by chapter 62A.9 RCW, as amended, and all agricultural liens provided for and perfected in accordance with Title 60 RCW. [1967 c 114 § 16.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Chapter 15.49
SEEDS
(Formerly: Washington state seed act)

Sections

15.49.005 Purpose—Rules. The purpose of this chapter is to provide uniformity and consistency in the packaging of agricultural, vegetable, and flower seeds so as to facilitate the interstate movement of seed, to protect consumers, and to provide a dispute-resolution process. The department of agriculture is hereby authorized to adopt rules in accordance with chapter 34.05 RCW to implement this chapter. To the extent possible, the department shall seek to incorporate into the rules provisions from the recommended uniform state seed law in order to attain consistency with other states. [1989 c 354 § 70.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: "Sections 70 through 81 and 84 through 86 of this act shall take effect January 1, 1990." [1989 c 354 § 88.]

Severability—1989 c 354: See note following RCW 15.32.010.

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

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

(2) "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

(3) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(4) "Bulk seed" means seed distributed in a nonpackage form.

(5) "Certifying agency" means (a) an agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or (b) an agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

(6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(7) "Dealer" means any person who distributes.

(8) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(9) "Director" means the director of the department of agriculture.

(10) "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state.

(11) "Flower seeds" includes seeds of herbaceous plants grown from their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(12) The terms "foundation seed," "registered seed," and "certified seed" mean seed that has been produced and labeled in compliance with the regulations of the department.

(13) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(14) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(15) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two varieties or species, except open-pollinated varieties of corn (Zea mays). The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(16) "Inert matter" means all matter not seed, that includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by rule.

(17) "Kind" means one or more related species or subspecies that singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

(18) "Label" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this chapter, and it may include any other information relating to the labeled seed.

(19) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.

(20) "Lot number" shall identify the producer or dealer and year of production or the year distributed for each lot of seed. This requirement may be satisfied by use of a conditioner's or dealer's code.

(21) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(22) "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(23) "Official sample" means any sample of seed taken and designated as official by the department.

(24) "Other crop seed" means seed of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by rule.

(25) "Prohibited (primary) noxious weed seeds" are the seeds of weeds which when established are highly destructive, competitive, and/or difficult to control by cultural or chemical practices.

(26) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(27) "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result is expressed as a whole number.

(28) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

(29) "Restricted (secondary) noxious weed seeds" are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices.

(30) "Retail" means to distribute to the ultimate consumer.

(31) "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning.

(32) "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state.

(33) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(34) "Stop sale, use, or removal order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed.

(35) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(36) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(37) "Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(38) "Vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(39) "Weed seeds" include the seeds of all plants generally recognized as weeds within this state, and includes the seeds of prohibited and restricted noxious weeds as determined by regulations adopted by the department.

(40) "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed.

(41) "Coated seed" means seed that has been treated and has received an application of inert material during the treatment process. [1989 c 354 § 73.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.021 Standards and label requirements—Rules. (1) The department shall establish by rule standards and label requirements for the following seed types: Agricultural seed (including grass, lawn, and turf seed), flower seed, and vegetable seed.

(2) The standards and label requirements shall be divided into the following categories:

(a) Percentage of kind and variety of each seed component present; and

(b) Percentage of weed seed (restricted and common).

(3) The standards and label requirements developed by the department shall at a minimum include:

(a) Amount of inert material;

(b) Specifics and warning for treated seed;

(c) Specifics for coated seed;

(d) Specifics and duration for inoculated seed;

(e) Specifics for seed which is below standard;

(f) Specifics for seed contained in containers, mats, tapes, or other planting devices;

(g) Specifics for seed sold in bulk;

(h) Specifics for hybrid seed; and

(i) Specifics for seed mixtures. [1989 c 354 § 71.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.031 Labels—Required information. In addition to the requirements contained in RCW 15.49.021, each seed label shall contain the following:

(1) The name and address of the person who labeled the seed and who sells, offers, or exposes the seed for sale within the state;

(2) Lot number identification;

(3) Seed origin;

(4) Germination rate and date of germination test or the year for which the seed was packaged for sale. [1989 c 354 § 72.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.041 Violations—Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than two thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. [1989 c 354 § 74.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.051 Unlawful practices. (1) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seeds within this state unless the test to determine the percentage of germination is completed within a fifteen-month period prior to sale, provided that germination tests for seed packaged in hermetically sealed containers shall be completed within thirty-six months prior to sale. The department shall establish rules for allowing retesting.

(2) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state not labeled in accordance with this chapter or having false or misleading labeling or for which there has been false or misleading advertisement.

(3) It is unlawful to represent seed to be certified unless it has been determined by a seed-certifying agency that such seed conformed to standards of purity and identity or variety in compliance with the rules adopted under this chapter.

(4) It is unlawful to attach any tags of similar size and format to the official certification tag that could be mistaken for the official certification tag.

(5) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state labeled with a variety name but not certified by an official seed-certifying agency when it is a variety for which a United States certification of plant variety protection under the plant variety protection act (7 U.S.C. Sec. 2321 et seq.) specifies sale only as a class of certified seed: PROVIDED, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(6) It is unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label required by this chapter or its implementing rules or to alter or substitute seed in a manner that may defeat the purpose of this chapter;

(b) To disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

(c) To hinder or obstruct in any way, any authorized person in the performance of his or her duties under this chapter;

(d) To fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified thereby;

(e) To use the word "trace" as a substitute for any statement that is required; and

(f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(7) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state that consists of or contains: (a) Prohibited noxious weed seeds; or (b) restricted noxious weed seeds in excess of the number declared on the label. [1989 c 354 § 75.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.061 Exceptions. (1) The provisions of RCW 15.49.011 through 15.49.051 do not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage by, or being transported or consigned to a conditioning establishment for conditioning if the invoice or labeling accompanying the shipment of such seed bears the statement "seeds for conditioning" and if any labeling or other representation that may be made with respect to the unconditioned seed is subject to this chapter;

(c) To any carrier with respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if the carrier is not engaged in producing, conditioning, or marketing seeds subject to this chapter; or

(d) Seed stored or transported by the grower of the seed.

(2) No person may be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter that were incorrectly labeled or represented as to kind, species, variety, or type, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as

may be reasonable to ensure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels. [1989 c 354 § 76.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.071 Damages—Arbitration prerequisite to legal action. (1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first provided for the arbitration of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date arbitration proceedings are instituted until ten days after the date on which the arbitration award becomes final.

(2) Similarly, no such claim may be asserted as a counterclaim or defense in any action brought by a dealer against a buyer until the buyer has first provided for arbitration of the claim. Upon the buyer's filing of a written notice of intention to assert such a claim as a counterclaim or defense in the action accompanied by a copy of the buyer's complaint in arbitration filed as provided in this chapter, the action shall be stayed, and any applicable statute of limitations shall be tolled with respect to such claim from the date arbitration proceedings are instituted until ten days after the arbitration award becomes final.

(3) Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under RCW 15.49.011 through 15.49.101.

(4) If the parties agree to submit the claim to arbitration and to be bound by the arbitration award, then the arbitration shall be subject to chapter 7.04 RCW, and RCW 15.49.081 through 15.49.111 will not apply to the arbitration. If the parties do not so agree, then the buyer may provide for mandatory arbitration by the arbitration committee under RCW 15.49.081 through 15.49.111. An award rendered in such mandatory arbitration shall not be binding upon the parties and any trial on any claim so arbitrated shall be de novo.

(5) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of two thousand dollars. All claims for two thousand dollars or less shall be commenced in either district court or small claims court. [1989 c 354 § 77.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.081 Arbitration—Filing fee—Rules. The director shall adopt rules, in conformance with chapter 34.05 RCW, providing for mandatory arbitration under this chapter and governing the proceedings of the arbitration committee. The decisions and proceedings of the arbitration committee shall not be subject to chapter 34.05 RCW. The department shall establish by rule a filing fee to cover the administrative costs of processing a complaint and submitting it to the arbitration committee. [1989 c 354 § 78.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.091 Arbitration—Procedure. (1) To submit a claim to mandatory arbitration, the buyer shall make and file with the department a sworn complaint against the dealer alleging the damages sustained. The buyer shall send a copy of the complaint to the dealer by United States registered mail. The filing fee shall be submitted to the department with each complaint filed and may be recovered from the dealer or other seller upon recommendations of the arbitration committee.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the department, by United States registered mail, the answer to the complaint. Failure of a dealer to file a timely answer to the complaint shall be so documented for the record.

(3) The director shall, upon receipt of the answer, refer the complaint and answer to the arbitration committee for investigation, findings, and recommendations.

(4) Any dealer may request an investigation by the arbitration committee for any dispute involving seed which may not otherwise be before the arbitration committee. [1989 c 354 § 79.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.101 Investigation of complaint by arbitration committee. (1) Upon referral of a complaint for investigation, the arbitration committee shall make a prompt and full investigation of the matters complained of and report its award to the director within sixty days of such referral or such later date as parties may determine or as may be required in subsection (3) of this section.

(2) The report of the arbitration committee shall include, in addition to its award, recommendations as to costs, if any.

(3) In the course of its investigation, the arbitration committee may examine the buyer and the dealer on all matters that the arbitration committee may consider relevant; may grow a representative sample of the seed referred to in the complaint if considered necessary; and may hold informal hearings at such time and place as the committee chairman may direct upon reasonable notice to all parties. If the committee decides to grow a representative sample of the seed, the sixty-day period identified in this section shall be extended an additional thirty days.

(4) After the committee has made its award, the director shall promptly transmit the report by certified mail to all parties. [1989 c 354 § 80.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.111 Arbitration committee—Creation—Generally. (1) The director shall create an arbitration committee composed of five members, including the director, or a department employee designated by the director, and

four members appointed by the director. The director shall make appointments so that the committee is balanced and does not favor the interests of either buyers or dealers. The director also shall appoint four alternates to the committee. In making appointments the director, to the extent practical, shall seek the recommendations of each of the following:

(a) The dean of the college of agriculture and home economics at Washington State University;

(b) The chief officer of an organization in this state representing the interests of seed dealers;

(c) The chief officer of an agriculture organization in this state as the director may determine to be appropriate; and

(d) The president of an agricultural organization in this state representing persons who purchase seed.

(2) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(3) The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the committee and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the commission as the chairman may direct.

(4) The purpose of the committee is to conduct arbitration as provided in this chapter. The committee may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director in accordance with this chapter.

(5) The members of the committee shall receive no compensation for performing their duties but shall be reimbursed for travel expenses; expense reimbursement shall be borne equally by the parties to the arbitration.

(6) For purposes of this chapter, a quorum of four members or their alternates is necessary to conduct an arbitration investigation or to make an award. If a quorum is present, a simple majority of members present shall be sufficient to make a decision. Any member disagreeing with the award may prepare a dissenting opinion and such opinion also will be included in the committee's report.

(7) The director shall make provisions for staff support, including legal advice, as the committee finds necessary. [1989 c 354 § 81.]

Effective date—1989 c 354 §§ 70 through 81 and 84 through 86: See note following RCW 15.49.005.

Severability—1989 c 354: See note following RCW 15.32.010.

15.49.310 Department to administer chapter—Rules and regulations—Guidance of federal seed act. The department shall administer, enforce, and carry out the provisions of this chapter and may adopt regulations necessary to carry out its purpose. The adoption of regulations shall be subject to a public hearing and all other applicable provisions of chapter 34.05 RCW (Administrative Procedure Act), as enacted and hereafter amended.

The department when adopting regulations in respect to the seed industry shall consult with affected parties, such as growers, conditioners, and distributors of seed. Any final regulation adopted shall be based upon the requirements and conditions of the industry and shall be for the purpose of promoting the well-being of the purchasers and users of seed as well as the members of the seed industry.

When seed labeling, terms, methods of sampling and analysis, and tolerances are not specifically stated in this chapter or otherwise designated by the department, the department shall, in order to promote uniformity, be guided by officially recognized associations, or regulations under The Federal Seed Act. [1981 c 297 § 9; 1969 c 63 § 31.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.330 Screenings—Removal required—Disposition. (1) All screenings, removed in the cleaning or conditioning of seeds, which contain prohibited or restricted noxious weed seeds shall be removed from the seed conditioning plant only under conditions that will prevent weed seeds from being dispersed into the environment.

(2) The director may by regulation adopt requirements for moving, conditioning, and/or disposing of screenings. [1981 c 297 § 11; 1979 c 154 § 1; 1969 c 63 § 33.]

Severability—1981 c 297: See note following RCW 15.36.110.

Severability—1979 c 154: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 154 § 27.]

15.49.350 Permit to condition certified seed. Upon application for a permit to condition certified seed, the department shall inspect the seed conditioning facilities of the applicant to determine that genetic purity and identity of seed conditioned can be maintained. Upon approval, the department shall issue a seed conditioning permit, for each regular place of business, which shall be conspicuously displayed in the office of such business. The permit shall remain in effect as long as the facilities comply with the department's requirements for such permit. [1981 c 297 § 13; 1969 c 63 § 35.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.360 Records—Maintenance—Availability of records and samples for inspection. The seed labeling registrant whose name appears on the label shall:

(1) Keep, for a period of two years after the date of final disposition, complete records of each lot of seed distributed: PROVIDED, That the file sample of each lot of seed distributed need be kept for only one year.

(2) Make available, during regular working hours, such records and samples for inspection by the department. [1969 c 63 § 36.]

15.49.370 Department's enforcement authority. The department shall have the authority to:

(1) Sample, inspect, make analysis of, and test seeds distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such seeds are in compliance with the provisions of this chapter. The methods of sampling and analysis shall be those adopted by the department from officially recognized sources. The department, in determining for administrative purposes whether seeds are in violation of this chapter, shall be guided by records, and by the official sample obtained and analyzed as provided for in this section. Analysis of an official sample, by the department, shall be accepted as prima facie evidence by any court of competent jurisdiction.

(2) Enter any dealer's or seed labeling registrant's premises at all reasonable times in order to have access to seeds and to records. This includes the determination of the weight of packages and bulk shipments.

(3) Adopt and enforce regulations for certifying seeds, and shall fix and collect fees for such service. The director of the department may appoint persons as agents for the purpose of assisting in the certification of seeds.

(4) Adopt and enforce regulations for inspecting, grading, and certifying growing crops of seeds; inspect, grade, and issue certificates upon request; and fix and collect fees for such services.

(5) Make purity, germination and other tests of seed on request, and fix and collect charges for the tests made.

(6) Establish and maintain seed testing facilities, employ qualified persons, establish by rule special assessments as needed, and incur such expenses as may be necessary to carry out the provisions of this chapter.

(7) Adopt a list of the prohibited and restricted noxious weed seeds.

(8) Publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production.

(9) Deny, suspend, or revoke licenses, permits and certificates provided for in this chapter subsequent to a hearing, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended, in any case in which the department finds that there has been a failure or refusal to comply with the provisions of this chapter or regulations adopted hereunder. [1981 c 297 § 14; 1969 c 63 § 37.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.380 Dealer's license to distribute seeds. (1) No person shall distribute seeds without having obtained a dealer's license for each regular place of business: PROVIDED, That no license shall be required of a person who distributes seeds only in sealed packages of eight ounces or less, packed by a seed labeling registrant and bearing the name and address of the registrant: PROVIDED FURTHER, That a license shall not be required of any grower selling seeds of his own production exclusively. Such seed sold by such grower must be properly labeled as provided in this chapter. Each dealer's license shall cost twenty-five dollars, shall be issued through the master license system, shall bear the date of issue, shall expire on the master license expiration date and shall be prominently displayed in each place of business.

(2) Persons custom conditioning and/or custom treating seeds for others for remuneration shall be considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed shall be through the master license system and shall include the name and address of the person applying for the license, the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds, and any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter. [1982 c 182 § 24; 1981 c 297 § 15; 1969 c 63 § 38.]

Severability—1982 c 182: See RCW 19.02.901.

Severability—1981 c 297: See note following RCW 15.36.110.

Master license system
existing licenses or permits registered under, when: RCW 19.02.810.
generally: RCW 15.49.035.
to include additional licenses: RCW 19.02.110.

15.49.390 Renewal of dealer's license. If an application for renewal of the dealer's license provided for in RCW 15.49.380, is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 25; 1969 c 63 § 39.]

Severability—1982 c 182: See RCW 19.02.901.

Master license
delinquency fee—Rate—Disposition: RCW 19.02.085.
expiration date: RCW 19.02.090.
system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.49.400 Seed labeling permit. (1) No person shall label seed for distribution in this state without having obtained a seed labeling permit. The seed labeling registrant shall be responsible for the label and the seed contents. The application for a seed labeling permit shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty dollars per applicant. The application form shall include the name and address of the applicant, a label or label facsimile, and any other reasonable and practical information prescribed by the department. Upon approval, the department shall issue said permit to the applicant. All permits expire on January 31st of each year.

(2) If an application for renewal of the seed labeling permit provided for in this section is not filed prior to February 1st of any one year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the license shall be issued: PROVIDED, That such additional fee shall not apply if the applicant furnishes an affidavit that he has not labeled seed for distribution in this state subsequent to the expiration of his prior permit. [1969 c 63 § 40.]

15.49.410 "Stop sale, use or removal orders"—Seizure—Condemnation. (1) When the department has determined or has probable cause to suspect that any lot of seed or screenings is mislabeled and/or is being distributed in violation of this chapter or regulations adopted hereunder, it may issue and enforce a written or printed "stop sale, use or removal order" warning the distributor not to dispose of the lot of seed or screenings in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of seed or screenings so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained, the department may bring proceedings for condemnation.

(2) Any lot of seed or screenings not in compliance with the provisions of this chapter shall be subject to seizure on

complaint of the department to a court of competent jurisdiction in the locality in which the seed or screenings are located. In the event the court finds the seed or screenings to be in violation of this chapter and orders the condemnation of said seed or screenings, such lot of seed or screenings shall be denatured, conditioned, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state: PROVIDED, That in no instance shall the court order such disposition of said seed or screenings without first having given the claimant an opportunity to apply to the court, within twenty days, for the release of said seed or screenings or for permission to condition or relabel it to bring it into compliance with this chapter. [1981 c 297 § 16; 1969 c 63 § 41.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.420 Damages precluded. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.49.410 if the court finds that there was probable cause for such action. [1969 c 63 § 42.]

15.49.460 Injunctions. The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any regulations promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1969 c 63 § 46.]

15.49.470 Moneys, disposition—Fees, fines, penalties and forfeitures of district courts, remittance. All moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. Any residual balance remaining in the seed fund on June 9, 1988, shall be transferred to that account within the agricultural local fund. All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1988 c 254 § 2; 1987 c 202 § 176; 1975 1st ex.s. c 257 § 2; 1969 ex.s. c 199 § 13; 1969 c 63 § 47.]

Intent—1987 c 202: See note following RCW 2.04.190.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.49.480 Cooperation and agreements with other agencies. The department may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1969 c 63 § 48.]

15.49.900 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1969. [1969 c 63 § 49.]

15.49.920 Effective date—1969 c 63. The effective date of this 1969 act is July 1, 1969. [1969 c 63 § 51.]

15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal. The repeal of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900 and the enactment of this 1969 act shall not be deemed to have repealed any regulations adopted under the provisions of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900, and in effect immediately prior to such repeal and not inconsistent with the provisions of this 1969 act. For the purpose of this 1969 act, it shall be deemed that such rules have been adopted under the provisions of this 1969 act pursuant to chapter 34.05 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this 1969 act shall be subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended, concerning the adoption of rules. [1969 c 63 § 52.]

15.49.940 Short title. RCW 15.49.020 through 15.49.950 shall be known as the "Washington State Seed Act." [1969 c 63 § 53.]

15.49.950 Severability—1969 c 63. If any section or provision of this 1969 act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1969 c 63 § 55.]

Chapter 15.53
COMMERCIAL FEED

Sections

15.53.901 Definitions. The definitions set forth in this section apply through [throughout] this chapter.

(1) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(2) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association.

(3) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial feed, or to offer for sale, sell, barter, or otherwise supply commercial feed in this state.

(4) "Distributor" means any person who distributes.

(5) "Sell" or "sale" includes exchange.

(6) "Commercial feed" means all materials including customer-formula feed which are distributed for use as feed or for mixing in feed, for animals other than man.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Customer-formula feed" means a mixture of commercial feed and/or materials each batch of which is mixed according to the specific instructions of the final purchaser or contract feeder.

(9) "Brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(10) "Product" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(11) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(12) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrappers, or otherwise accompanying such commercial feed.

(13) "Ton" means a net weight of two thousand pounds avoirdupois.

(14) "Percent" or "percentage" means percentage by weight.

(15) "Official sample" means any sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024.

(16) "Contract feeder" means an independent contractor, or any other person who feeds commercial feed to animals pursuant to an oral or written agreement whereby such commercial feed is supplied, furnished or otherwise provided to such person by any distributor and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product: PROVIDED, That it shall not include a bona fide employee of a manufacturer or distributor of commercial feed.

(17) "Retail" means to distribute to the ultimate consumer. [1982 c 177 § 1; 1975 1st ex.s. c 257 § 3; 1965 ex.s. c 31 § 2. Prior acts on this subject: 1961 c 11 §§ 15.53.010 through 15.53.900; 1953 c 80 §§ 1-35.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9012 Administration and administrative rules. The department shall administer, enforce and carry out the provisions of this chapter and may adopt rules necessary to carry out its purpose. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.05 RCW (Administrative Procedure Act), as enacted or hereafter amended.

The director when adopting rules in respect to the feed industry shall consult with affected parties, such as manufacturers and distributors of commercial feed and any final rule adopted shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and condition of the industry and shall be for the purpose of promoting the well-being of the members of the feed industry as well as the well-being of the purchasers and users of feed and for the general welfare of the people of the state. [1965 ex.s. c 31 § 3.]

Continuation of rules adopted under prior law: RCW 15.53.9052.

15.53.9014 Registration of feeds—Exemptions—Application—Renewal—Fees—May be refused. (1) Each commercial feed shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state: PROVIDED, That sales of food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants; unmixed seed, whole or processed, made directly from the entire seed; unground hay, straw, stover, silage, cobs, husks, and hulls, when not mixed with other material; bona fide experimental feeds on which accurate records and experimental programs are maintained; and customer-formula feeds are exempt from such registration. The exemption for byproducts provided by this subsection does not apply to byproducts or products of sugar refineries or to materials used in the preparation of pet foods.

(a) Beginning July 1, 1982, each registration for a commercial feed product distributed in packages of ten pounds or more shall be accompanied by a fee of ten dollars. If such commercial feed is also distributed in packages of less than ten pounds it shall be registered under subsection (b) of this section.

(b) Beginning July 1, 1982, each registration for a commercial feed product distributed in packages of less than ten pounds shall be accompanied by an annual registration fee of forty dollars on each such commercial feed so distributed, but no inspection fee may be collected on packages of less than ten pounds of the commercial feed so registered.

(2) The application for registration shall be on forms provided by the department.

(3) The department may require that such application be accompanied by a label and/or other printed matter describing the product. All registrations expire on December 31st of each year, and are renewable unless such registration is canceled by the department or it has called for a new registration, or unless canceled by the registrant.

(4) The application shall include the information required by RCW 15.53.9016(1)(b) through (1)(e).

(5) A distributor shall not be required to register any commercial feed brand or product which is already registered under the provisions of this chapter.

(6) Changes in the guarantee of either chemical or ingredient composition of a commercial feed registered under the provisions of this chapter may be permitted if there is

satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which designed.

(7) The department is empowered to refuse registration of any application not in compliance with the provisions of this chapter and to cancel any registration subsequently found to be not in compliance with any provisions of this chapter, but a registration shall not be refused or canceled until the registrant has been given opportunity to be heard before the department and to amend his application in order to comply with the requirements of this chapter.

(8) If an application for renewal of the registration provided for in this section is not filed prior to January 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration may be issued, unless the applicant furnishes an affidavit that he has not distributed this feed subsequent to the expiration of his prior registration. [1982 c 177 § 2; 1975 1st ex.s. c 257 § 4; 1965 ex.s. c 31 § 4.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9016 Labeling. (1) Any commercial feed registered with the department and distributed in this state shall be accompanied by a legible label bearing the following information:

(a) The net weight as required under chapter 19.94 RCW as enacted or hereinafter amended.

(b) The name or brand under which the commercial feed is distributed.

(c) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added: Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the department. Products distributed solely as mineral and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat, and fiber.

(d) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(e) The name and principal address of the person responsible for distributing the commercial feed.

(2) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery.

(3) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(a) Name and address of the mixer;

(b) Name and address of the purchaser;

(c) Date of sale; and

(d) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(4) If a commercial feed contains a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or which is intended to affect the structure or any function of the animal body, the department may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

(5) A customer-formula feed shall be considered to be in violation of this chapter if it does not conform to the invoice labeling. Upon request of the department it shall be the duty of the person distributing the customer-formula feed to supply the department with a copy of the invoice which represents that particular feed: PROVIDED, That such person shall not be required to keep such invoice for a period of longer than six months. [1965 ex.s. c 31 § 5.]

15.53.9018 Inspection fees—Reports—Confidentiality, exception. (1) On or after June 30, 1981, each initial distributor of a commercial feed in this state shall pay to the department an inspection fee on all commercial feed sold by such person during the year. The fee shall be not less than four cents nor more than fourteen cents per ton as prescribed by the director by rule: PROVIDED, That such fees shall be used for routine enforcement of RCW 15.53.9022 and for analysis for contaminants only when the department has reasonable cause to believe any lot of feed or any feed ingredient is adulterated.

(2) In computing the tonnage on which the inspection fee must be paid, sales of: (a) Commercial feed to other feed registrants; (b) commercial feed in packages weighing less than ten pounds; (c) commercial feed for shipment to points outside this state; (d) food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants; (e) unmixed seed, whole or processed, made directly from the entire seed; (f) unground hay, straw, stover, silage, cobs, husks, and hulls, when not mixed with other material; and (g) bona fide experimental feeds on which accurate records and experimental programs are maintained may be excluded. The exemption for byproducts provided by this subsection does not apply to byproducts or products of sugar refineries or to materials used in the preparation of pet foods.

(3) When more than one distributor is involved in the distribution of a commercial feed, the last registrant or initial distributor who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the feed.

(4) Each person made responsible by this chapter for the payment of inspection fees for commercial feed sold in this state shall file a report with the department on January 1st

and July 1st of each year showing the number of tons of such commercial feed sold during the six calendar months immediately preceding the date the report is due. The proper inspection fee shall be remitted with the report. The person required to file the report and pay the fee shall have a thirty-day period of grace immediately following the day the report and payment are due to file the report, and pay the fee. Upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than one hundred tons for each six-month period during any year, and upon filing such statement such person shall pay the inspection fee at the rate provided for in subsection (1) of this section.

(5) Each distributor shall keep such reasonable and practical records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department has the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes a violation of this chapter, and may result in the issuance of an order for "withdrawal from distribution" on any commercial feed being subsequently distributed.

(6) Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a collection fee of ten percent, but not less than ten dollars, added to the amount due when payment is finally made. The assessment of this collection fee shall not prevent the department from taking other actions as provided for in this chapter.

(7) The report required by subsection (4) of this section shall not be a public record, and it is a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report: PROVIDED, That nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(8) Any commercial feed purchased by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees. [1982 c 177 § 3; 1981 c 297 § 17; 1979 c 91 § 1; 1975 1st ex.s. c 257 § 5; 1967 c 240 § 32; 1965 ex.s. c 31 § 6.]

Effective date—1981 c 297 § 17: "Section 17 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1981." [1981 c 297 § 44.] This applies to the 1981 c 297 amendment to RCW 15.53.9018.

Severability—1981 c 297: See note following RCW 15.36.110.

Effective date—1979 c 91: "This act shall take effect on January 1, 1980." [1979 c 91 § 2.] This applies to the 1979 c 91 amendment to RCW 15.53.9018.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

Severability—1967 c 240: See note following RCW 43.23.010.

15.53.902 Adulteration. It is unlawful for any person to distribute an adulterated feed. A commercial feed is deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a food additive); or

(3) If it is, or it bears, or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act; or

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act; or

(5) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act; or

(6) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(7) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(8) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains viable, restricted (secondary) noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.49 RCW as enacted or hereafter amended and rules adopted thereunder. [1982 c 177 § 4; 1979 c 154 § 2; 1965 ex.s. c 31 § 7.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.53.9022 Misbranding. It shall be unlawful for any person to distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is distributed under the name of another feed;

(3) If it is not labeled as required in RCW 15.53.9016 and in regulations prescribed under this chapter;

(4) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In the adopting of such regulations the department may consider commonly accepted definitions such as those issued by nationally recognized associations or groups of feed control officials;

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(6) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling. [1965 ex.s. c 31 § 8.]

15.53.9024 Official samples. (1) It shall be the duty of the department to sample, inspect, make analysis of, and test commercial feed distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such feeds are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting feed on the public highways and direct it to the nearest scales approved by the department to check weights of feeds being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises including any vehicle of transport at all reasonable times in order to have access to commercial feed and to records relating to their distribution. This includes the determining of the weight of packages and bulk shipments.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in RCW 15.53.901(13) and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made the results of analysis shall be forwarded by the department to the distributor and to the purchaser if known. Upon request and within thirty days the department shall furnish to the distributor a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1965 ex.s. c 31 § 9.]

Prosecutions, official analysis as evidence: RCW 15.53.904.

15.53.9036 Procedure for denial, etc., of registration. All hearings for a denial, suspension, or revocation of any registration provided for in this chapter shall be subject to the provisions of chapter 34.05 RCW (the Administrative Procedure Act) concerning adjudicative proceedings. [1989 c 175 § 51; 1975 1st ex.s. c 257 § 6; 1965 ex.s. c 31 § 15.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9038 Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure. (1) When the department has reasonable cause to believe that any lot of commercial feed is adulterated or misbranded or is being distributed in violation of this chapter or any regulations hereunder it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when the provisions and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with the provisions and regulations is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial feed is located. If the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. The court shall first give the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter. [1982 c 177 § 5; 1975 1st ex.s. c 257 § 7; 1965 ex.s. c 31 § 16.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.904 Department's remedies for noncompliance—Penalties—Prosecutions—Injunctions. (1) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than one hundred dollars for the first violation, and not less than two hundred dollars nor more than five hundred dollars for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceed-

ings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond. [1965 ex.s. c 31 § 17.]

Analysis of official sample as evidence: RCW 15.53.9024.

15.53.9042 Department to publish distribution information, production data and analyses comparison. The department shall publish at least annually, in such forms as it may deem proper, information concerning the distribution of commercial feed, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feed within the state as compared with the analyses guaranteed in the registration and on the label or as calculated from the invoice data for customer-formula feeds: PROVIDED, That the information concerning production and use of commercial feeds shall not disclose the operations of any person. [1965 ex.s. c 31 § 18.]

15.53.9044 Disposition of moneys. All moneys collected under this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. Any residual balance remaining in the commercial feed fund on June 9, 1988, shall be transferred to the account within the agricultural local fund. [1988 c 254 § 5; 1975 1st ex.s. c 257 § 8; 1965 ex.s. c 31 § 19.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9046 Cooperation with other entities. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out the purpose and provisions of this chapter. [1965 ex.s. c 31 § 24.]

15.53.9048 Chapter is cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 ex.s. c 31 § 20.]

15.53.905 Repeal of prior law. Sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and RCW 15.53.010 through 15.53.900 are each repealed. [1965 ex.s. c 31 § 25.]

Prior liability preserved: "The enactment of this act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this act." [1965 ex.s. c 31 § 21.]

Continuation of prior licenses and registrations: "All registrations and licenses in effect under sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961, and RCW 15.53.010 through 15.53.900 on the effective date of this act shall continue in full force and effect until December 31, 1965. No registration that has already been paid under the requirements of any prior act shall be refunded." [1965 ex.s. c 31 § 23.]

Effective date—1965 ex.s. c 31: "The effective date of this act is July 1, 1965." [1965 ex.s. c 31 § 26.]

The foregoing annotations apply to 1965 ex.s. c 31. For codification of that act, see Codification Tables, Volume 0.

15.53.9052 Continuation of rules adopted under prior law. The repeal of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1965 ex.s. c 31 § 22.]

Administration and administrative rules: RCW 15.53.9012.

15.53.9053 Repealer—Continuation of prior licenses and registrations—1975 1st ex.s. c 257. (1) The following acts or parts of acts are each repealed:

(a) Section 10, chapter 31, Laws of 1965 ex. sess., section 33, chapter 240, Laws of 1967 and RCW 15.53.9026; and

(b) Sections 11 through 14, chapter 31, Laws of 1965 ex. sess. and RCW 15.53.9028 through 15.53.9034.

(2) The enactment of *this act and the repeal of the sections listed in subsection (1) of this section shall not have the effect of terminating, or in any way modify any liability, civil or criminal, which shall already be in existence on July 1, 1975.

(3) All licenses and registrations in effect on July 1, 1975 shall continue in full force and effect until their regular expiration date, December 31, 1975. No registration or license that has already been paid under the requirements of prior law shall be refunded. [1975 1st ex.s. c 257 § 12.]

***Reviser's note:** "this act" [1975 1st ex.s. c 257] consists of this section and amendments to RCW 15.13.470, 15.49.470, 15.53.901, 15.53.9014, 15.53.9018, 15.53.9036, 15.53.9038, 15.53.9044, 15.54.350, 15.54.360, and 15.54.480.

Effective date—1975 1st ex.s. c 257: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1975." [1975 1st ex.s. c 257 § 13.]

15.53.9054 Severability—1965 ex.s. c 31. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1965 ex.s. c 31 § 27.]

15.53.9056 Short title. This chapter shall be known as the "Washington Commercial Feed Law". [1965 ex.s. c 31 § 1.]

Chapter 15.54
FERTILIZERS, AGRICULTURAL MINERALS AND LIMES
(Washington commercial fertilizer act)

Sections

Crop liens: Chapter 60.11 RCW.

15.54.270 Scope of definitions. Terms used in this chapter shall have the meaning given to them in this chapter unless where used the context thereof shall clearly indicate to the contrary. [1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

Construction—1987 c 45: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1987 c 45 § 32.]

Severability—1987 c 45: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 45 § 33.]

Effective date—1967 ex.s. c 22: See RCW 15.54.930.

15.54.272 "Commercial fertilizer." "Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It shall not include unmanipulated animal and vegetable manures and other products exempted by the department by rule. [1987 c 45 § 2; 1967 ex.s. c 22 § 2.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.274 "Specialty fertilizer." "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries. [1967 ex.s. c 22 § 3.]

15.54.276 "Bulk fertilizer." "Bulk fertilizer" means commercial fertilizer distributed in a nonpackage form such as, but not limited to, tote bags, tanks, trailers, spreader trucks, and railcars. [1987 c 45 § 3; 1967 ex.s. c 22 § 4.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.278 "Brand." "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers. [1967 ex.s. c 22 § 5.]

15.54.280 "Guaranteed analysis." (1) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N) . . . . . percent
Available phosphoric acid(P_2O_5) . . . . percent
Soluble potash (K_2O) . . . . . percent

The percentage must be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(2) For unacidulated mineral phosphatic material, basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(3) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as permitted or required by regulation of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(4) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical

chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(5) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate ($CaSO_4 \cdot 2H_2O$) shall be given along with the percentage of total sulfur. [1987 c 45 § 4; 1967 ex.s. c 22 § 6.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.281 "Calcium carbonate equivalent." "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate. [1987 c 45 § 6.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.282 "Grade." "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis", unless otherwise allowed by a regulation adopted by the department. [1967 ex.s. c 22 § 7.]

15.54.284 "Total nutrients." "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis. [1967 ex.s. c 22 § 8.]

15.54.286 "Lime." "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium and/or magnesium carbonate, hydroxide, or oxide, singly or combined. [1967 ex.s. c 22 § 9.]

15.54.288 "Ton." "Ton" means the net weight of two thousand pounds avoirdupois. [1967 ex.s. c 22 § 10.]

15.54.290 "Percent", "percentage." "Percent" or "percentage" means the percentage by weight. [1967 ex.s. c 22 § 11.]

15.54.292 "Department." "Department" means the department of agriculture of the state of Washington or its duly authorized representative. [1967 ex.s. c 22 § 12.]

15.54.294 "Person." "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association. [1967 ex.s. c 22 § 13.]

15.54.296 "Customer-formula fertilizer." "Customer-formula fertilizer" means a mixture of commercial fertilizer and/or materials of which each batch is mixed according to the specific instructions of the final purchaser. [1967 ex.s. c 22 § 14.]

15.54.297 "Manipulation." "Manipulation" means processed or treated in any manner, including drying to a moisture content of less than thirty percent. [1987 c 45 § 5.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.298 "Registrant." "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter. [1967 ex.s. c 22 § 15.]

15.54.300 "Official sample." "Official sample" means any sample of commercial fertilizer taken by the department and designated as "official" by the department. [1967 ex.s. c 22 § 16.]

15.54.302 "Distribute." "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, or otherwise supply commercial fertilizer in this state. [1967 ex.s. c 22 § 17.]

15.54.304 "Distributor." "Distributor" means any person who distributes. [1967 ex.s. c 22 § 18.]

15.54.306 "Label." "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer. [1987 c 45 § 7.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.307 "Labeling." "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer. [1987 c 45 § 8.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.320 Brand and grade registration—Application, forms, fee—Expiration—Penalty for nonrenewal. (1) Each brand and grade of commercial fertilizer shall be registered by the person whose name appears upon the label, or the person's agent, before being distributed in this state. Companies planning to mix customer-formula fertilizers shall include the statement "Customer-Formula Grade Mixes" under the column headed GRADES on the brand registration application form. The application for registration shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty-five dollars per brand. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31st of each year. The application shall include the following information:

(a) The brand name;

(b) Declaration of guaranteed analyses of formulations to be sold;

(c) The name and address of the registrant and the manufacturer; and

(d) Any other information required by the department by rule.

A label or labels which shall comply with RCW 15.54.340 shall accompany said application.

(2) A distributor shall not be required to register any brand of commercial fertilizer which is already registered under this chapter by another person if the label does not differ in any respect from that previously registered. However, bulk commercial fertilizer shall be registered by each person distributing such commercial fertilizer.

(3) A distributor shall not be required to register each grade of a customer-formula fertilizer: PROVIDED, That such grade shall be distributed under a registered brand.

(4) If an application for renewal of the brand registration provided for in this section is not filed prior to January of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal brand registration shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed this brand subsequent to the expiration of his prior registration. [1987 c 45 § 11; 1967 ex.s. c 22 § 20.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.330 Brand and grade registration—Certificate of registration. The department shall examine the registration application form and labels for conformance with the requirements of this chapter. If the application and appropriate labels are in proper form and contain the required information, the particular brand and grade of commercial fertilizer shall be registered by the department and a certificate of registration shall be issued to the applicant. The department may refuse registration, or cancel the registration, of any brand or grade of commercial fertilizer, the distribution of which would be in violation of any provisions of this chapter. [1967 ex.s. c 22 § 21.]

15.54.340 Labeling requirements. (1) Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(a) The net weight;

(b) The brand and grade. The grade shall not be required when no primary nutrients are claimed;

(c) The guaranteed analysis;

(d) The name and address of the registrant. The name and address of the manufacturer, if different from the registrant, may also be stated; and

(e) Other information as required by the department by rule.

(2) If distributed in bulk, a written or printed statement of the information required by subsection (1) above shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant for a period of six months and shall be available to the department upon request: PROVIDED, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant, or manufacturer, or both; and the name and address of the purchaser. [1987 c 45 § 12; 1967 ex.s. c 22 § 22.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.350 Inspection fees. (1) There shall be paid to the department for all commercial fertilizers distributed in this state to nonregistrants an inspection fee of nine cents per ton of lime and eighteen cents per ton of all other commercial fertilizer distributed during the year beginning July 1st and ending June 30th.

(2) In computing the tonnage on which the inspection fee must be paid, distribution of commercial fertilizers in packages weighing five pounds net or less, and distribution of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant who distributes to a nonregistrant is responsible for paying the inspection fee, unless the payment of fees has been made by a prior distributor of the fertilizer. [1987 c 45 § 13; 1981 c 297 § 18; 1975 1st ex.s. c 257 § 9; 1967 ex.s. c 22 § 23.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1981 c 297: See note following RCW 15.36.110.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.54.362 Reports—Inspection fees—Late collection fee—Confidentiality, exception. (1) Every registrant who distributes commercial fertilizer in this state shall file a semiannual report with the department setting forth the number of net tons of each commercial fertilizer so distributed in this state. The reports will cover the following periods: January 1 through June 30 and July 1 through December 31 of each year. The reports shall be due on or before thirty days following the close of the reporting period: PROVIDED, That upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than one hundred tons for each six-month period during any calendar year, and upon filing such statement, such person shall pay the inspection fee required under RCW 15.54.350. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

(2) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state shall include the inspection fees with the report on the same dates and for the same reporting periods mentioned in subsection (1) of this section.

(3) The department may, upon request, require registrants to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

(4) Inspection fees which are due and have not been remitted to the department by the due date shall have a late-collection fee of ten percent, but not less than five dollars, added to the amount due when payment is finally made. The assessment of this late collection fee shall not prevent

the department from taking any other action as provided for in this chapter.

(5) It shall be a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department. [1987 c 45 § 14.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.370 Official samples—Right of entry. (1) It shall be the duty of the department to inspect, sample, make analysis of, and test commercial fertilizers distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such fertilizers are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to commercial fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in RCW 15.54.300 and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the results of analysis shall be forwarded by the department to the registrant and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the registrant a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1987 c 45 § 16; 1967 ex.s. c 22 § 25.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.380 Penalties for deficiencies upon analysis of commercial fertilizers—Appeal—Disposition of penalties. (1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall be assessed in favor of the department in accordance with the following provisions:

(a) A penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(b) A penalty of three times the commercial value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) above, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant. The department shall deposit the amount of the penalty into the fertilizer, agricultural mineral and lime account.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) above.

(4) The civil penalties payable in subsections (1) and (2) above shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying said civil penalties. [1987 c 45 § 17; 1967 ex.s. c 22 § 26.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.390 Determination and publication of commercial values—Use in assessment of penalty payments. For the purpose of determining the commercial value to be applied under the provisions of RCW 15.54.380, the department shall determine and publish the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state. The values so determined and published shall be used in determining and assessing penalty payments and shall be established by rule. [1987 c 45 § 18; 1967 ex.s. c 22 § 27.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.400 Restrictions on sale—Minimum percentages. No superphosphate containing less than eighteen percent of available phosphoric acid may be sold or offered for sale in this state. Specialty fertilizers, except manipulated animal and vegetable manures, guaranteeing less than five percent total plant food shall contain on the label specific directions for use, and prior to registration, the department may require proof of the efficacy of the product when used as directed. [1987 c 45 § 19; 1967 ex.s. c 22 § 28.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.412 Misbranding. No person may distribute misbranded commercial fertilizer. A commercial fertilizer shall be deemed to be misbranded:

(1) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) If it is distributed under the name of another fertilizer product;

(3) If its labeling bears any reference to registration under this chapter unless such reference is required by rule under this chapter;

(4) If any word, statement, or other information, required by this chapter or rules adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, design, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) If it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by the department by rule. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. [1987 c 45 § 20.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.414 Adulteration. No person may distribute an adulterated commercial fertilizer. A commercial fertilizer shall be deemed to be adulterated:

(1) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling; or

(3) If it contains unwanted viable seed. [1987 c 45 § 21.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.420 Unlawful acts. It shall be unlawful for any person to:

(1) Distribute an adulterated or misbranded commercial fertilizer;

(2) Fail, refuse, or neglect to place upon or attach to each container of distributed commercial fertilizer a label containing all of the information required by this chapter;

(3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter; or

(4) Distribute a brand or grade of commercial fertilizer which has not been registered with the department. [1987 c 45 § 22; 1967 ex.s. c 22 § 30.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.430 Publication of distribution information, analyses results. The department shall publish at least annually and in such form as it may deem proper (1) information concerning the distribution of commercial fertilizers and (2) results of analyses based on official samples as compared with the analyses guaranteed. [1967 ex.s. c 22 § 31.]

15.54.436 Cancellation of registration or refusal to register if fraudulent or deceptive practices used—Opportunity for hearing. The department may cancel the registration of any brand and grade of commercial fertilizer or refuse to register any brand and grade of commercial fertilizer as provided in this chapter, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of any provision of this chapter or any rule adopted thereunder: PROVIDED, That no registration may be revoked or refused until the registrant has been given the opportunity to appear for a hearing by the department. [1987 c 45 § 24.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.440 "Stop sale, use, or removal" order, when issued—Release. The department may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer to hold said commercial fertilizer at a designated place when the department has reasonable cause to believe such fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter, until this chapter has been complied with and said commercial fertilizer is released by order in writing of the department. The department shall release the commercial fertilizer so withdrawn when the owner or custodian has complied with the provisions of this chapter. [1987 c 45 § 23; 1967 ex.s. c 22 § 32.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.450 Noncompliance—Seizure—Disposition. Any lot of commercial fertilizer not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this chapter and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: PROVIDED, That in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this chapter. [1967 ex.s. c 22 § 33.]

15.54.460 Damages from administrative action, stop sales or seizures. No state court shall allow the recovery of

damages from administrative action taken or for stop sales or seizures under RCW 15.54.440 and 15.54.450 if the court finds that there was probable cause for such action. [1967 ex.s. c 22 § 34.]

15.54.470 Penalty—Violation warnings—Duty of prosecuting attorney—Injunctions. (1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a brand or grade or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1967 ex.s. c 22 § 35.]

15.54.474 Penalty—Failure to comply with chapter or rule. Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person, who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section. [1987 c 45 § 10.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.480 Disposition of moneys. All moneys collected under the provisions of this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. Any residual balance remaining in the fertilizer, agricultural mineral and lime fund on June 9, 1988, shall be transferred to that account within the agricultural local fund. [1988 c 254 § 3; 1975 1st ex.s. c 257 § 11; 1967 ex.s. c 22 § 36.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.54.490 Cooperation with other entities. The director may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1967 ex.s. c 22 § 37.]

15.54.800 Enforcement of chapter—Adoption of rules. (1) The director shall administer and enforce the provisions of this chapter and any rules adopted under this chapter. All authority and requirements provided for in chapters 34.05 and *42.32 RCW apply to this chapter in the adoption of rules.

(2) The director may adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Definitions of terms;

(b) Determining standards for labeling and registration of fertilizers and agricultural minerals and limes;

(c) The collection and examination of fertilizers and agricultural mineral and limes;

(d) Recordkeeping by registrants;

(e) Regulation of the use and disposal of fertilizers for the protection of ground water and surface water; and

(f) The safe handling, transportation, storage, display, and distribution of fertilizers. [1987 c 45 § 9.]

***Reviser's note:** RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15. Later enactment, see chapter 42.30 RCW.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.910 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this chapter. [1967 ex.s. c 22 § 38.]

15.54.930 Effective date—1967 ex.s. c 22. The effective date of this act is July 1, 1967. [1967 ex.s. c 22 § 40.]

15.54.940 Continuation of rules adopted pursuant to repealed sections. The repeal of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1967 ex.s. c 22 § 41.]

Repeal of prior law by 1967 act: "Sections 15.54.010 through 15.54.250 and section 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 are each repealed." [1967 ex.s. c 22 § 43.]

15.54.950 Short title. RCW 15.54.270 through 15.54.490 and 15.54.910 through 15.54.940 shall be known as the "Washington Commercial Fertilizer Act". [1967 ex.s. c 22 § 42.]

15.54.960 Severability—1967 ex.s. c 22. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1967 ex.s. c 22 § 44.]

Chapter 15.58
WASHINGTON PESTICIDE CONTROL ACT

Sections

15.58.010 Short title. This chapter may be known and cited as the Washington Pesticide Control Act. [1971 ex.s. c 190 § 1.]

15.58.020 Declaration of public interest. The formulation, distribution, storage, transportation, and disposal of any pesticide and the dissemination of accurate scientific information as to the proper use, or nonuse, of any pesticide, is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1971 ex.s. c 190 § 2.]

15.58.030 Definitions. As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(5) "Department" means the Washington state department of agriculture.

(6) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(7) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(8) "Director" means the director of the department or a duly authorized representative.

(9) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(10) "EPA" means the United States environmental protection agency.

(11) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(13) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(14) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(15) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(16) "Inert ingredient" means an ingredient which is not an active ingredient.

(17) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. In the case of a spray adjuvant the ingredient statement need contain only the names of the principal functioning agents and the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need by named.

(18) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(19) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(20) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(21) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(22) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(23) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(24) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(25) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(26) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(27) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(28) "Pest control consultant" means any individual who acts as a structural pest control inspector, who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice, supervision, or aid, or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(29) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(30) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.

(31) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(32) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(33) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to

otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(34) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(35) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(36) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(37) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own, intended to be used with any other pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from that of the pesticide with which it is to be used.

(38) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(39) "Structural pest control inspector" means any individual who performs the service of inspecting a building for wood destroying organisms, their damage, or conditions conducive to their infestation.

(40) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(41) "Weed" means any plant which grows where not wanted. [1992 c 170 § 1; 1991 c 264 § 1; 1989 c 380 § 1; 1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

Severability—1982 c 182: See RCW 19.02.901.

15.58.040 Director's authority—Rules. (1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices; and

(k) The establishment of criteria governing the conduct of a structural pest control inspection.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency. [1991 c 264 § 2; 1989 c 380 § 2; 1971 ex.s. c 190 § 4.]

15.58.045 Disposal of unusable pesticides—Rules. The director of agriculture may adopt rules to allow the department of agriculture to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons licensed under chapter 15.58 RCW or regulated under chapter 17.21 RCW. For purposes of this section, the department may become licensed as a hazardous waste generator. The department may set fees to cover expenses in connection with pesticide waste received from persons licensed under chapter 15.58 RCW. [1989 c 354 § 57.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.58.050 Registration of pesticides—Generally. Every pesticide which is distributed within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any

point outside this state shall be registered with the director subject to the provisions of this chapter. Such registration shall be renewed annually prior to January 1: PROVIDED, That registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this chapter; or if a written permit has been obtained from the director to distribute or use the specific pesticide for experimental purposes subject to restrictions and conditions set forth in the permit. [1989 c 380 § 3; 1971 ex.s. c 190 § 5.]

Surcharge: RCW 15.58.415.

15.58.060 Statement for registration—Contents. (1) The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) The complete formula of the pesticide, including the active and inert ingredients: PROVIDED, That confidential business information of a proprietary nature is not made available to any other person and is exempt from disclosure as a public record, as provided by RCW 42.17.260;

(d) Other necessary information required for completion of the department's application for registration form; and

(e) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(3) The director may prescribe other necessary information by rule. [1989 c 380 § 4; 1971 ex.s. c 190 § 6.]

15.58.065 Protection of privileged or confidential information. (1) In submitting data required by this chapter, the applicant may:

(a) Mark clearly any portions which in the applicant's opinion are trade secrets or commercial or financial information; and

(b) Submit such marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make public information which in the director's judgment should be privileged or confidential because it contains or relates to trade secrets or commercial or financial information except that, when necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director when necessary under this chapter.

(3) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, the director shall notify the applicant or registrant in writing, by certified mail. The director shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in the superior court of Thurston county for a declaratory judgment as to whether such information is subject to protection under subsection (2) of this section. [1989 c 380 § 5; 1979 c 146 § 4.]

15.58.070 Pesticide annual registration fee—Home and garden use products, optional. (1) Any person desiring to register a pesticide with the department shall pay to the director an annual registration fee for each pesticide registered by the department for such person. The registration fee for the registration of pesticides for any one person during a calendar year shall be: One hundred five dollars for each of the first twenty-five pesticides registered; one hundred dollars for each of the twenty-sixth through one-hundredth pesticides registered; seventy-five dollars for each of the one hundred first through one hundred fiftieth pesticides registered; and fifty dollars for each additional pesticide registered. In addition, the department may establish by rule a registration fee not to exceed ten dollars for each registered product labeled and intended for home and garden use only. The revenue generated by the home and garden use only fees shall be deposited in the agriculture—local fund, to be used to assist in funding activities of the pesticide incident reporting and tracking review panel. All pesticide registrations expire on December 31st of each year.

(2) Any registration approved by the director and in effect on the 31st day of December for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110. [1989 c 380 § 6; 1983 c 95 § 2; 1971 ex.s. c 190 § 7.]

Surcharge: RCW 15.58.415.

15.58.080 Additional fee for late registration renewal. If the renewal of a pesticide registration is not filed before January 1st of each year, an additional fee of twenty-five dollars shall be assessed and added to the original fee. The additional fee shall be paid by the applicant before the registration renewal for that pesticide shall be issued unless the applicant furnishes an affidavit certifying that the applicant did not distribute the unregistered pesticide during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry. [1989 c 380 § 7; 1983 c 95 § 3; 1971 ex.s. c 190 § 8.]

15.58.090 Certain agencies may register without fee—Not subject to RCW 15.58.180. All federal, state, and county agencies shall register without fee all pesticides sold by them and they shall not be subject to the license provisions of RCW 15.58.180. [1971 ex.s. c 190 § 9.]

15.58.100 Criterion for registering. (1) The director shall require the information required under RCW 15.58.060 and shall register the label or labeling for such pesticide if he determines that:

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted comply with the requirements of this chapter;

(c) It will perform its intended function without unreasonable adverse effects on the environment;

(d) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment;

(e) In the case of any pesticide subject to section 24(c) of FIFRA, it meets (1) (a), (b), (c), and (d) of this section and the following criteria:

(i) The proposed classification for general use, for restricted use, or for both is in conformity with section 3(d) of FIFRA;

(ii) A special local need exists.

(2) The director shall not make any lack of essentiality a criterion for denying registration of any pesticide. [1979 c 146 § 2; 1971 ex.s. c 190 § 10.]

15.58.110 Refusing or canceling registration—Procedure. (1) If it does not appear to the director that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter or rules adopted under this chapter, the registrant shall be notified of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the corrections the director shall refuse to register the pesticide. The applicant may request a hearing as provided for in chapter 34.05 RCW.

(2) The director may, when the director determines that a pesticide or its labeling does not comply with the provisions of this chapter or the rules adopted under this chapter, cancel the registration of a pesticide after a hearing in accordance with the provisions of chapter 34.05 RCW. [1989 c 380 § 8; 1971 ex.s. c 190 § 11.]

15.58.120 Suspension of registration when hazard to public health. The director may, when the director determines that there is or may be an imminent hazard to the public health and welfare, suspend on the director's own motion, the registration of a pesticide in conformance with the provisions of chapter 34.05 RCW. [1989 c 380 § 9; 1971 ex.s. c 190 § 12.]

15.58.130 "Misbranded" as applicable to pesticides, devices, or spray adjuvants. The term "misbranded" shall apply:

(1) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) To any pesticide:

(a) If it is an imitation of or is offered for sale under the name of another pesticide;

(b) If its labeling bears any reference to registration under the provision of this chapter unless such reference be required by rules under this chapter;

(c) If any word, statement, or other information, required by this chapter or rules adopted under this chapter to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If the label does not bear:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) Name, brand or trademark under which the pesticide is sold;

(iii) An ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: PROVIDED, That the director may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iv) Directions for use and a warning or caution statement which are necessary and which if complied with would be adequate to protect the public and to prevent injury to the public, including living people, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land; and

(v) The weight or measure of the content, subject to the provisions of chapter 19.94 RCW (state weights and measures act) as enacted or hereafter amended.

(e) If that pesticide contains any substance or substances in quantities highly toxic to people, determined as provided by RCW 15.58.040, unless the label bears, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(f) If the pesticide container does not bear a label or if the label does not contain all the information required by this chapter or the rules adopted under this chapter.

(3) To a spray adjuvant when the label fails to state the type or function of the principal functioning agents. [1989 c 380 § 10; 1971 ex.s. c 190 § 13.]

15.58.140 "Adulterated" as applicable to pesticides. The term "adulterated" shall apply to any pesticide if its strength or purity deviates from the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted, or if any contaminant is present in an amount which is determined by the director to be a hazard. [1971 ex.s. c 190 § 14.]

15.58.150 Unlawful practices. (1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: PROVIDED, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the rules adopted under this chapter;

(d) Any pesticide including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have been distinctly denatured as to color, taste, odor, or form if so required by rule;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating rules adopted pursuant to RCW 15.58.040(2)(f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any pesticide to any person who is required by law or rules promulgated under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesticide sold or delivered: PROVIDED, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the rules adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions: PROVIDED, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his or her own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after a pest inspection or to fail to comply with criteria established by rule for structural pest control inspections;

(f) For any person to make false, misleading, or erroneous statements or reports in connection with any pesticide complaint or investigation. [1991 c 264 § 3; 1989 c 380 § 11; 1987 c 45 § 25; 1979 c 146 § 3; 1971 ex.s. c 190 § 15.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.58.160 Violations of chapter—"Stop sale, use or removal" order. When the director has reasonable cause to believe a pesticide or device is being distributed, stored, or transported in violation of any of the provisions of this chapter, or of any of the prescribed rules under this chapter, the director may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order, the director may attach the order to the pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the director, or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. [1989 c 380 § 12; 1971 ex.s. c 190 § 16.]

15.58.170 "Stop sale, use or removal" order—Adjudication. (1) After service of a "stop sale, use or removal" order is made upon any person, either that person or the director may file an action in a court of competent jurisdiction in the county in which a violation of this chapter or rules adopted under this chapter is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this chapter or rules adopted under this chapter: PROVIDED, That no authority is granted hereunder to affect the sale or use of products on which legally approved pesticides have been legally used.

(2) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and the proceeds, if such pesticide or device is sold, less cost including legal costs, shall be paid to the state treasury as provided in RCW 15.58.410: PROVIDED, That the pesticide or device shall not be sold contrary to the provisions of this chapter or rules adopted under this chapter. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(3) When a decree of condemnation is entered against the pesticide, court costs, fees, and storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide. [1989 c 380 § 13; 1971 ex.s. c 190 § 17.]

15.58.180 Pesticide dealer license—Generally. (1) Except as provided in subsections (4) and (5) of this section, it is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license shall expire on the master license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his or her principal out-of-state location or outlet, but such licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.

(2) Application for a license shall be accompanied by a thirty-dollar annual license fee and shall be made through the master license system and shall include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. The application shall further state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director.

(3) It is unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification. The department shall be notified forthwith of any change in the pesticide dealer manager designee during the licensing period.

(4) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of the applicator's pesticide application service when such pesticides are dispensed only through apparatuses used for such pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs.

(5) A user of a pesticide may distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter 70.105 RCW. [1989 c 380 § 14; 1983 c 95 § 4; 1982 c 182 § 27; 1971 ex.s. c 190 § 18.]

Severability—1982 c 182: See RCW 19.02.901.

Master license system: Chapter 19.02 RCW.

Surcharge: RCW 15.58.415.

15.58.200 Pesticide dealer manager—License qualifications. The director shall require each pesticide dealer manager to demonstrate to the director knowledge of pesticide laws and rules; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. Application for a license shall be accompanied by a license fee of fifteen dollars. The pesticide dealer manager license shall be an annual license expiring on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1992 c 170 § 2; 1991 c 109 § 38; 1989 c 380 § 15; 1981 c 297 § 19; 1971 ex.s. c 190 § 20.]

Severability—1981 c 297: See note following RCW 15.36.110.

Surcharge: RCW 15.58.415.

15.58.210 Pest control consultant licenses—Exemptions. (1) Except as provided in subsection (2) of this section, no individual may perform services as a pest control consultant without obtaining from the director an annual license, which license shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. Except as provided in subsection (3) of this section, no individual may act as a structural pest control inspector without first obtaining from the director a pest control consultant license in the special category of structural pest control inspector. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of thirty dollars.

(2) The following are exempt from the licensing requirements of subsection (1) of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of subsection (1) of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet.

(3) The following are exempt from the structural pest control inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if such inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of such damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest control inspector licensing requirement. [1992 c 170 § 3. Prior: 1991 c 264 § 4; 1991 c 109 § 39; 1989 c 380 § 16; 1983 c 95 § 5; 1971 ex.s. c 190 § 21.]

Surcharge: RCW 15.58.415.

15.58.220 Public pest control consultant license. For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant as defined in RCW 15.58.030(28). No person shall act as a public pest control consultant on or after February 28, 1973 without first obtaining an annual license from the director. The license shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses.

Application for a license shall be on a form prescribed by the director and shall be accompanied by an annual license fee of fifteen dollars. Federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or a duly authorized representative, public pest control consultants licensed and working in the health vector field, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision. [1991 c 109 § 40; 1989 c 380 § 17; 1986 c 203 § 4; 1981 c 297 § 20; 1971 ex.s. c 190 § 22.]

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1981 c 297: See note following RCW 15.36.110.

Surcharge: RCW 15.58.415.

15.58.230 Consultant's license—Requirements. The director shall require each applicant for a pest control consultant's license or a public pest control consultant's license to demonstrate to the director the applicant's knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination for the classifications for which the applicant has applied prior to issuing the license. [1989 c 380 § 18; 1971 ex.s. c 190 § 23.]

15.58.235 Renewal of licenses—Delinquency. (1) If an application for renewal of a pesticide dealer license is not filed on or before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license is issued.

(2) If application for renewal of any license provided for in this chapter other than the pesticide dealer license is not filed on or before the expiration date of the license, a penalty equivalent to the license fee shall be assessed and added to the original fee, and shall be paid by the applicant before the renewal license is issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(3) Any license for which a renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [1989 c 380 § 19.]

15.58.240 Classification of licenses. The director may classify licenses to be issued under the provisions of this chapter. Such classifications may include but not be limited to agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license the licensee shall be limited to practicing within these classifications. Each such classification shall be subject to separate testing procedures and requirements: PROVIDED, That no person shall be required to pay an additional license fee if the person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section. The director may charge an examination fee established by the director by rule when an examination is necessary, before a license may be issued or when application for a license and examination is made at other than a regularly scheduled examination date. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination or other recertification standards as determined by the director when deemed necessary because new knowledge or new classifications are required to carry out the responsibilities of the licensee. [1989 c 380 § 20; 1986 c 203 § 5; 1971 ex.s. c 190 § 24.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.58.245 Expiration of licenses. Unless revoked for cause by the director, any registration, license, or permit in effect on July 23, 1989, shall continue in full force until its expiration date. Public pest control consultant and pesticide dealer manager licenses valid on December 31, 1985, shall expire on December 31, 1990, and public pest control and pesticide dealer manager licenses issued subsequent to December 31, 1985, and valid on December 31, 1986, shall expire on December 31, 1991. Unless revoked for cause, any pesticide dealer manager license issued prior to June 11, 1992, shall be valid until its expiration date. [1992 c 170 § 4; 1989 c 380 § 21.]

15.58.250 Recordkeeping requirements. Any person issued a license or permit under the provisions of this chapter may be required by the director to keep accurate records on a form prescribed by the director which may contain the following information:

(1) The delivery, movement or holding of any pesticide or device, including the quantity;

(2) The date of shipment and receipt;

(3) The name of consignor and consignee; and

(4) Any other information, necessary for the enforcement of this chapter, as prescribed by the director.

The director shall have access to such records at any reasonable time to copy or make copies of such records for the purpose of carrying out the provisions of this chapter. [1989 c 380 § 22; 1971 ex.s. c 190 § 25.]

15.58.260 Civil penalties and/or denial, suspension, or revocation of license, registration or permit. The director is authorized to impose a civil penalty and/or deny, suspend, or revoke any license, registration or permit provided for in this chapter subject to a hearing and in conformance with the provisions of chapter 34.05 RCW (Administrative Procedure Act) in any case in which the director finds there has been a failure or refusal to comply with the provisions of this chapter or rules adopted under this chapter. [1989 c 380 § 23; 1985 c 158 § 2; 1971 ex.s. c 190 § 26.]

15.58.270 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40

RCW as enacted or hereafter amended. [1971 ex.s. c 190 § 27.]

15.58.280 Sampling and examination of pesticides or devices—Procedure when criminal proceedings contemplated. The sampling and examination of pesticides or devices shall be made under the direction of the director for the purpose of determining whether or not they comply with the requirements of this chapter. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this chapter or rules adopted under this chapter, and the director contemplates instituting criminal proceedings against any person, the director shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director it appears that the provisions of this chapter or rules adopted under this chapter have been violated by such person, the director shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred. [1989 c 380 § 24; 1971 ex.s. c 190 § 28.]

15.58.290 Minor violations, warning notice in writing. Nothing in this chapter shall be construed as requiring the director to report for prosecution or for the institution of condemnation proceedings minor violations of this chapter when the director believes that the public interest will be best served by a suitable notice of warning in writing. [1989 c 380 § 25; 1971 ex.s. c 190 § 29.]

15.58.300 Persons exempted from certain penalties under RCW 15.58.150. The penalties provided for violations of RCW 15.58.150(1)(a), (b), (c), (d), and (e) shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide within the state, if such carrier, upon request, permits the director to copy all records showing the transaction in and movement of the articles.

(2) Public officials of the state and the federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides. [1971 ex.s. c 190 § 30.]

15.58.310 Pesticides for foreign export not in violation of chapter. No pesticides shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply. [1971 ex.s. c 190 § 31.]

15.58.320 Certain pharmacists exempted from licensing provisions. The license provisions of this chapter shall not apply to any pharmacist who is licensed pursuant to chapter 18.64 RCW and does not distribute any pesticide required to be registered under the provisions of this chapter. [1971 ex.s. c 190 § 32.]

15.58.330 Violation of chapter—Misdemeanor. Any person violating any provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor. [1989 c 380 § 26; 1971 ex.s. c 190 § 33.]

15.58.335 Civil penalty. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1989 c 380 § 27; 1985 c 158 § 1.]

15.58.340 Injunction. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1989 c 380 § 28; 1971 ex.s. c 190 § 34.]

15.58.345 Damages—Civil action not precluded. Nothing in this chapter shall preclude any person aggrieved by a violation of this chapter from bringing suit in a court of competent jurisdiction for damages arising from the violation. [1989 c 380 § 29.]

15.58.350 Persons charged with enforcement barred from interest in pesticides, devices. No person charged with the enforcement of any provision of this chapter shall be directly or indirectly interested in the sale, manufacture or distribution of any pesticide or device. [1971 ex.s. c 190 § 35.]

15.58.360 No recovery of damages when probable cause. No state court shall allow the recovery of damages from administrative action taken or for "stop sale, use or removal" if the court finds that there was probable cause for such action. [1971 ex.s. c 190 § 36.]

15.58.370 Results of analyses to be published. The department shall publish at least annually and in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides: PROVIDED, That individual distribution information shall not be a public record. [1971 ex.s. c 190 § 37.]

15.58.380 Board to advise director. The pesticide advisory board shall advise the director on any or all problems relating to the formulation, distribution, storage,

transportation, disposal, and use of pesticides in the state. [1971 ex.s. c 190 § 38.]

15.58.400 Cooperation and agreements with other agencies. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1971 ex.s. c 190 § 40.]

15.58.405 Emergency situations—Special local needs—Experimental use permits. For the purpose of exercising the authority granted to the state under the provisions of FIFRA, the director may:

(1) Meet emergency conditions in this state by applying for an exemption from any provision of FIFRA as provided for by section 18 of that act. If such exemption is granted by the administrator of EPA the director may carry out and enforce the requirements and conditions of the exemption;

(2) Comply with the requirements necessary to issue special local needs registration under section 24(c) of FIFRA; and

(3) Comply with the requirements necessary to issue experimental use permits under section 5(f) of FIFRA. [1979 c 146 § 5.]

15.58.410 Moneys to be paid into state treasury. All moneys received by the director under the provisions of this chapter shall be paid into the state treasury. [1971 ex.s. c 190 § 41.]

15.58.415 Registration and license fee surcharge—Agricultural local fund—Incidents and investigations. Each registration and licensing fee under this chapter is increased by a surcharge of five dollars to be deposited in the *agriculture—local fund, provided that an additional one-time surcharge of five dollars shall be collected on January 1, 1990. The revenue raised by the imposition of this surcharge shall be used to assist in funding the pesticide incident reporting and tracking review panel, department of social and health services' pesticide investigations, and the department of agriculture's pesticide investigations. [1989 c 380 § 32.]

***Reviser's note:** The fund referenced here should have been cited as the agricultural local fund. See RCW 43.23.230.

Pesticide incident reporting and tracking review panel: RCW 70.104.080.

15.58.420 Report to legislature. By December 1, 1989, and each subsequent December 1, the department shall report to the appropriate committees of the house of representatives and the senate on the activities of the department under this chapter. The report shall include, at a minimum, a review of the department's enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed. [1989 c 380 § 30.]

15.58.900 Effective date—1971 ex.s. c 190. The effective date of this act is July 1, 1971: PROVIDED, That the effective date of sections 21, 22 and 23 is March 1, 1973. [1971 ex.s. c 190 § 42.]

15.58.910 Continuation of rules adopted pursuant to repealed sections. The repeal of RCW 15.57.010 through 15.57.930 and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of RCW 15.57.010 through 15.57.930 in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. All such rules shall be considered to have been adopted under the provisions of this chapter. [1989 c 380 § 31; 1971 ex.s. c 190 § 43.]

15.58.920 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this chapter becomes effective. [1971 ex.s. c 190 § 44.]

15.58.940 Severability—1971 ex.s. c 190. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 190 § 46.]

15.58.941 Severability—1979 c 146. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 146 § 7.]

15.58.942 Severability—1989 c 380. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 380 § 88.]

Chapter 15.60
APIARIES

Sections

Honey, standards and marketing: Chapter 69.28 RCW.

15.60.005 Definitions. As used in this chapter:

(1) "Director" means the director of agriculture of the state of Washington;

(2) "Department" means the department of agriculture of the state of Washington;

(3) "Apiary" includes bees, hives, and appliances, wherever they are kept, located, or found;

(4) "Abandoned apiary" means an apiary that has not been supered in the spring, unsupered in the fall, or otherwise managed for a period of twelve months;

(5) "Apiarist" means any person who owns bees or is a keeper of bees;

(6) "Appliances" means any implements or devices used in the manipulating of bees, their brood or hives, which may be used in any apiary or any extracting or packing equipment;

(7) "Bees" means honey producing insects of the species apis mellifera and include the adults, eggs, larvae, pupae, or other immature stages thereof;

(8) "Certificate" means an inspection document, showing the presence of or freedom from a disease, and origin of shipment documentation which shall be an official document of the regulatory agency responsible for issuance;

(9) "Colony" or "colonies of bees" refers to any natural group of bees having a queen;

(10) "Disease" includes but is not limited to American foulbrood, European foulbrood, chalkbrood, nosema, sacbrood, external and internal mites, or any other viral, fungal, bacterial or insect-related disease or any condition affecting bees or their brood which may cause an epidemic;

(11) "Hive" means any receptacle or container made or prepared for the use of bees, or box or other container taken possession of by bees, including movable frames, combs, or substances deposited into the hive by bees;

(12) "Location" means any premises upon which an apiary is located;

(13) "Person" includes any individual, firm, partnership, association, or corporation, but does not include any common carrier when engaged in the business of transporting bees, hives, appliances, bee cages, or other commodities subject to the provisions of this chapter, in the regular course of business;

(14) "Inspector" means an apiary inspector authorized by the director to inspect apiaries as provided in this chapter. [1988 c 4 § 1; 1977 ex.s. c 362 § 1; 1961 c 11 § 15.60.005. Prior: 1955 c 271 § 1.]

15.60.007 Apiary inspection fund. The apiary inspection fund shall be part of the agricultural local fund. No appropriation is required for disbursements from the apiary inspection fund. [1988 c 4 § 14.]

15.60.010 Division of apiculture created—Travel expenses of director. There is hereby created a division of apiculture in the department of agriculture, which shall consist of the director of agriculture and of such apiary inspectors as he may appoint. The director shall receive no additional salary for performance of his duties under this chapter but shall be paid travel expenses incurred in performing such duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 16; 1961 c 11 § 15.60.010. Prior: 1933 ex.s. c 59 § 1; RRS § 3170-1; prior: 1919 c 116 § 1.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.60.015 Inspection—Disease control—Standards of strength—Identification—Abandoned apiaries—Rules, regulations, orders. (1) The director shall have the power on his own motion or by petition of industry to promulgate and enforce such reasonable rules, regulations, and orders as he may deem necessary or proper to prevent the introduction or spreading of diseases affecting bees or appliances in this state, and to promulgate and enforce such reasonable rules, regulations, and orders as he may deem necessary or proper governing the inspection of all bees and appliances within or about to be imported into this state. Such rules may include establishment of:

(a) Standards of strength for colonies of bees used for pollinating services;

(b) A beekeeper certification program for those whose colony management systems consistently have only low levels of American foulbrood;

(c) Identification for bee hives; and

(d) Maximum levels of American foulbrood which would prohibit interstate movement of inspected colonies and the colony conditions and inspection season under which such inspections will be conducted.

(2) All rules, regulations, and orders under this section shall be adopted in accordance with chapter 34.05 RCW. [1988 c 4 § 2; 1977 ex.s. c 362 § 2; 1961 c 11 § 15.60.015. Prior: 1955 c 271 § 2.]

15.60.020 Reciprocal agreements—Inspectors, appointment, duties, compensation, travel expenses. (1) The director shall have authority to enter into reciprocal agreements with any and all states for the prevention or spread of diseases affecting bees or appliances. The director shall appoint one or more apiary inspectors as conditions may warrant, who shall, under his direction:

(a) Have charge of the inspection of apiaries and bees;

(b) Investigate outbreaks of bee diseases;

(c) Investigate bee losses suspected of being caused by pesticides and other chemicals;

(d) Investigate bee losses or economic losses as requested by industry;

(e) Perform colony strength inspections;

(f) Perform inspections for out-of-state movement of bees or appliances;

(g) Inspect queen bee rearing apiaries;

(h) Conduct surveys in support of this chapter;

(i) Conduct the enforcement of quarantine regulations as may be promulgated by the department;

(j) Conduct the enforcement of the provisions of this chapter in relation to the eradication and control of bee diseases; and

(k) Perform any other such duties as the director may prescribe.

(2) Such apiary inspector, or inspectors, shall be paid such reasonable compensation as may be fixed by the director while so employed and travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060.

(3) Services or inspections requested by industry shall only be performed for apiarists in compliance with this chapter. The director shall charge the person requesting the inspector's services all costs including per diem and travel expenses, with the proceeds to be placed in the apiary inspection fund within the agricultural local fund. [1988 c 4 § 3; 1975-'76 2nd ex.s. c 34 § 17; 1961 c 11 § 15.60.020. Prior: 1955 c 271 § 4; prior: 1949 c 105 § 1, part; 1945 c 113 § 1, part; 1933 ex.s. c 59 § 2, part; 1919 c 116 § 3, part; Rem. Supp. 1949 § 3170-2, part.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.60.025 Apiary advisory board. There is created in the department the apiary advisory board, hereafter in this section referred to as the "board", consisting of six members appointed by the director. The members of the board shall be beekeepers representing the major geographical divisions of the beekeeping industry in the state. Such geographical divisions shall be determined by the director in accordance with the provisions of chapter 34.05 RCW. In making the selection of the membership of the board, the director shall take into consideration the recommendations of the beekeeping industry.

The term of office of the members of the board shall be three years. No person shall serve two successive terms as a member of the board.

The director may appoint a department representative as the secretary of the board.

The board shall be advisory to the director on all matters relating to the beekeeping industry and may make recommendations on all matters affecting the activities of the department in relation to the beekeeping industry.

The board shall meet at the call of the director or at the request of any three members of the board. It shall meet at least once each year.

Each member of the board shall serve without compensation, but shall be reimbursed for travel expenses incurred in attending meetings of the board and any other official duty authorized by the board and approved by the director in accordance with RCW 43.03.050 and 43.03.060: PROVIDED, HOWEVER, That the board shall be compensated only if apiarists are charged a sufficient fee to cover the expenses of the apiary board. [1988 c 4 § 4; 1977 ex.s. c 362 § 8.]

15.60.030 Registration of apiaries—Identification number—Fee—Placement. Each person owning or having bees in his or her possession shall register with the director the name, address, and phone number of the owner, and identify the apiary as provided for herein, on or before April 1st each year. A registration fee may be set by the department of agriculture in compliance with chapter 34.05 RCW for the purpose of covering the expenses of the apiary board, or otherwise at the request of the industry. The fees shall be placed in the apiary inspection fund of the department.

The director shall issue to each apiarist owning or operating more than twenty-five colonies in the state who is registered with the department an apiarist identification number. Apiary locations shall be identified by displaying the assigned identification number in at least four inch characters on the side and top of some colonies in each apiary location. The identification shall be in a color that contrasts with the color of the hive. This identification shall be conspicuous to anyone approaching the apiary location. Any apiarist owning or operating no more than twenty-five colonies shall, when placing bees on other than his or her own property, place his or her name and address so as to be conspicuous to anyone approaching the apiary location. [1988 c 4 § 5; 1981 c 296 § 7; 1977 ex.s. c 362 § 3; 1965 c 44 § 1; 1961 c 11 § 15.60.030. Prior: 1955 c 271 § 5; prior: 1949 c 105 § 1, part; 1945 c 113 § 1, part; 1933 ex.s. c 59 § 2, part; 1919 c 116 § 3, part; Rem. Supp. 1949 § 3170-2, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.040 Inspection—Eradication of disease—Quarantine—Scientific analysis—Disinfection. (1) The director shall make or cause to be made whenever the director deems it necessary, inspections of all apiaries.

(2) Whenever a disease exists in any apiary, the inspector making the inspection may quarantine the apiary and shall plainly mark the hives containing diseased bees. The inspector shall, in writing, notify the owner or person in charge or in possession of such apiary, stating in the notice the nature of the disease found in each colony, identifying such colony by reference to the mark placed upon the hive thereof, and ordering eradication of such disease in accordance with subsections (3) and (4) of this section or as prescribed by the director within a specified time. When the owner or person in charge or in possession of any apiary cannot be contacted immediately, the notice shall be served by placing conspicuously in the apiary, or by mailing a copy thereof to the owner's registered address.

(3) The owner or person in charge or in possession of any diseased bees or hives must eradicate such disease within the time specified in the notice. If the disease is American foulbrood, the time specified in the notice shall not be less than twenty-four hours nor more than one hundred and twenty hours from the time of serving the notice.

(4) The owner or person in charge or in possession of any hive infected with American foulbrood shall eradicate such disease by:

(a) Burning the diseased hive including bees, combs, frames, honey, and wax, and burying the ashes by means approved by the director; or

(b) Delivering the hive, comb intact, to a wax salvage plant or fumigation chamber which has been authorized and designated by the director as suitable for such purposes which shall disinfect the hive by means approved by the director.

(5) Any apiary which is found infected with disease and to be dangerous to the health of any apiary in this state may be summarily quarantined by the department. Notice of the

quarantine shall be placed conspicuously in the apiary, and the owner notified of such quarantine. The quarantine shall not be removed until the department reasonably determines that no further infection exists. During the quarantine period, no bees, honey, appliances, or other materials may be removed from the apiary without first procuring a permit from the department.

(6) If the inspector finds that American foulbrood disease has infected more than two hives of ninety-nine hives or fewer, or more than two percent of hives of one hundred or more, the inspector may, if he or she deems it necessary, make a complete inspection of all hives in the apiary and the owner of the apiary shall pay the actual and necessary costs of the complete inspection.

(7) The owner or operator of any colony of bees found to be infected with American foulbrood shall upon his or her request be entitled to a scientific analysis of such colony before it is declared a public nuisance by the director. The results of such analysis shall be conclusive as to whether the colony is diseased. The costs of such scientific analysis shall be paid by the apiarist owning or operating the colonies being analyzed if it is found to be diseased. In case the colony is found not to be diseased, the department shall pay the cost of the scientific analysis. The laboratory performing such scientific analysis shall be approved by the director.

A person who has inspected an infected apiary or knowingly comes in contact with any diseased bees, shall, before proceeding to another apiary, thoroughly disinfect his or her person, clothing, tools, and appliances that have come in contact with any infected bees or material. [1988 c 4 § 6; 1981 c 296 § 8; 1977 ex.s. c 362 § 4; 1961 c 11 § 15.60.040. Prior: 1959 c 174 § 1; 1955 c 271 § 6; prior: (i) 1949 c 105 § 2; 1933 ex.s. c 59 § 3; Rem. Supp. 1949 § 3170-3. (ii) 1933 ex.s. c 59 § 4; RRS § 3170-4.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.042 Public nuisances—Notice of violation—Abatement—Seizure. (1) The following are declared a public nuisance and in violation of this chapter:

(a) Any apiary in which American foulbrood is found;

(b) Any hives wherein the combs or frames are immovable or which are so constructed as to impede or hinder inspection;

(c) Any abandoned apiary; and

(d) Any colony of apis mellifera scutellata or hybrid of that subspecies.

(2) The inspector shall give notice of such violation in the manner provided in RCW 15.60.040. Whenever any such nuisance exists and the owner refuses or fails to abate it within the time specified in the notice, the department shall abate the nuisance. The owner shall pay the actual and necessary costs of abatement, with the proceeds to be placed in the apiary inspection fund of the department.

(3) Whenever the director finds that an apiary has been abandoned and that the apiary constitutes a threat of disease to bees, the director may seize and destroy the abandoned apiary. Before doing so, however, the director shall make a reasonable effort to identify the owner of the apiary and provide the owner with notice of the director's intent to seize and destroy the apiary and with opportunity to take possession of the apiary and eliminate the threat of disease. If ownership cannot be readily ascertained and if the apiary is considered to have value, then the director shall provide for notice by publication. However, notice by publication need not be provided if the value is less than the publication costs. Whenever an owner reclaims an abandoned apiary, the owner shall be liable for all costs of the department resulting from the abandonment. [1988 c 4 § 7.]

15.60.043 Colony strength inspection. An apiarist or his or her pollination customer may request the director to make a colony strength inspection of any colony of bees. The director, subject to the availability of qualified personnel, shall make such inspection but shall provide the apiarist with advance notice, when possible, of the inspection date. A copy of the inspection certificate shall be sent to the person requesting the inspection and the apiarist within forty-eight hours of the colony strength inspection.

The colony strength requirement shall be decided on a yearly basis by the director, in cooperation with the apiary advisory board created by RCW 15.60.025. [1988 c 4 § 8; 1981 c 296 § 9; 1977 ex.s. c 362 § 9.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.050 Right of entry to inspect. Inspectors shall have access to all apiaries and places where bees, hives, or appliances are kept, and it shall be unlawful to resist, impede, or hinder such inspectors in the discharge of their duties. [1988 c 4 § 9; 1977 ex.s. c 362 § 5; 1961 c 11 § 15.60.050. Prior: 1933 ex.s. c 59 § 6; RRS § 3170-6.]

15.60.100 Importation of bees and appliances—Certificate—Permit—Requirements. (1) It shall be unlawful for any person or common carrier to bring into this state for any purpose any bees or used appliances, except empty used package bee cages, without first having secured an official certificate, which shall be based on an inspection performed no more than sixty days prior to movement (except by special permission from the department) by the state bee inspector of the state of origin and an import permit issued by the department. The import permit with specific requirements may be obtained by mailing the original copy of the state of origin certificate and a request for a permit to the apiary inspection division of the department. Queen and package producers shall provide a list of Washington destination shipments with names and addresses at the end of the shipping season.

(2) The certificate shall contain, but not be limited to, a statement that the shipment is not infected with American foulbrood or other diseases regulated by the department and the state of origin and shall specify all diseases noted at the time of inspection and the number of colonies in the shipment. It shall also indicate the destination of the apiary, giving the name and complete address or phone number of the apiarist in charge of the apiary location at destination.

(3) A copy of the import permit shall accompany the shipment into Washington. Bees and appliances found to have been imported without compliance with this section may be summarily quarantined and inspected by the department. Inspection costs, including per diem and travel expenses, shall be charged to the apiarist in charge of the

colonies. Fees collected shall be placed in the apiary inspection fund of the department.

(4) Nets or other devices approved by the director shall be required on all loads of hives containing bee colonies entering or leaving the state to prevent the escape of bees during transit.

(5) Each apiary or location shall be marked for identification by placing the name and address of the person importing the bees, hives, or used appliances in letters at least one inch in height so as to be conspicuous to anyone approaching the apiary location.

(6) If evidence of any disease is found, such imported bees or appliances shall be subject to the same provisions as local Washington bees or appliances.

(7) A resident beekeeper of Washington state who obtains a valid inspection certificate and moves his or her bees out of state for wintering may not be required to obtain an inspection certificate from the state from which they are being returned, provided that the bees are returned to the state prior to May 15th each year.

(8) A resident beekeeper of Washington state who moves his or her bees out of state for summer pasture shall be required to obtain an inspection certificate from that state prior to returning to Washington, even though the bees may winter in a third state prior to returning to Washington. [1988 c 4 § 10; 1981 c 296 § 10; 1977 ex.s. c 362 § 7; 1961 c 11 § 15.60.100. Prior: 1955 c 271 § 9; prior: (i) 1941 c 130 § 2; Rem. Supp. 1941 § 3183-2. (ii) 1941 c 130 § 3, part; Rem. Supp. 1941 § 3183-3, part. (iii) 1949 c 105 § 5; 1941 c 130 § 5; 1933 ex.s. c 59 § 7; 1919 c 116 § 11; Rem. Supp. 1949 § 3183-5. (iv) 1949 c 105 § 3; Rem. Supp. 1949 § 3170-10.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.110 Certain importation prohibited. No person shall knowingly import into this state any bees of the subspecies apis mellifera scutellata, or Africanized honey bees, except for research purposes under permit from the director and under conditions as set forth by the director. [1988 c 4 § 11; 1977 ex.s. c 362 § 6; 1961 c 11 § 15.60.110. Prior: 1955 c 271 § 10; prior: 1941 c 130 § 3, part; Rem. Supp. 1941 § 3183-3, part.]

15.60.120 Queen bee rearing apiaries, inspection—Certificate—Use of honey. Every person rearing queen bees for sale shall request each queen rearing apiary be inspected when conditions are favorable for inspection. If the inspection discloses any contagious or infectious disease in any apiary, the apiarist shall not ship any queen bees therefrom until he or she receives a certificate in writing from the inspector that such apiary is apparently free from disease.

No person rearing queen bees for sale may use honey in making candy for use in mailing cages unless the honey has been boiled for at least thirty minutes. [1988 c 4 § 12; 1981 c 296 § 11; 1961 c 11 § 15.60.120. Prior: 1933 ex.s. c 59 § 8, part; RRS § 3170-8, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.140 Penalty. Any person who violates any provisions of this chapter shall have committed a class I civil infraction as provided in chapter 7.80 RCW. [1988 c 4 § 13; 1981 c 296 § 12; 1961 c 11 § 15.60.140. Prior: (i) 1949 c 105 § 4; 1933 ex.s. c 59 § 12; Rem. Supp. 1949 § 3170-12. (ii) 1941 c 130 § 6; Rem. Supp. 1941 § 3183-6.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.150 Malicious, wilful killing or injuring bees—Penalty. No person shall wilfully or maliciously kill honey bees in an apiary, or, for the purpose of injuring honey bees place any poisonous or sweetened substance in a place where it is accessible to them within this state.

Any person who violates any provision of this section shall be guilty of a misdemeanor. [1981 c 296 § 13; 1961 c 11 § 15.60.150. Prior: 1897 c 12 §§ 1, 2; no RRS.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.170 Apiary coordinated areas—Authority to create. The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering on the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW 15.60.190, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and/or the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area. [1991 c 363 § 15; 1989 c 354 § 64.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—1989 c 354: See note following RCW 15.32.010.

15.60.180 Apiary coordinated areas—Hearing to establish. When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in RCW 15.60.170 through 15.60.210. [1989 c 354 § 65.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.60.190 Apiary coordinated areas—Order describing. Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the apiary coordinated areas within the county as to the maximum allowable number of hives per site, the minimum allowable distance between sites, and the minimum required setback from property lines. The order shall be entered upon the records of the county and published in a newspaper having general circulation in the county at least once each week for four successive weeks. [1989 c 354 § 66.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.60.200 Apiary coordinated areas—Violation of order—Misdemeanor. Any person, or any agent, employee, or representative of a corporation, violating any of the provisions of such order after the order has been published or posted as provided in RCW 15.60.190, or violating any provision of this chapter, shall be guilty of a misdemeanor. [1989 c 354 § 67.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.60.210 Apiary coordinated areas—Boundary change procedure. When the county legislative authority of any county deems it advisable to change the boundary or boundaries of any apiary coordinated area, a hearing shall be held in the same manner as provided in RCW 15.60.180. If the county legislative authority decides to change the boundary or boundaries of any apiary coordinated area or areas, they shall within thirty days after the conclusion of such hearing make an order describing the change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in the county once each week for four successive weeks. [1989 c 354 § 68.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.60.900 Severability—1977 ex.s. c 362. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 362 § 11.]

Chapter 15.61
LADYBUGS AND OTHER BENEFICIAL INSECTS

Sections

15.61.010 Administrative declaration—Regulation of commercial movement. The director of agriculture in order to protect the production of native and/or domestic plants or their products in this state, may declare ladybugs or any other insects to be beneficial insects and necessary to maintain a beneficial biological balance over insects which are detrimental to such native and/or domestic plants or their products. Such declaration shall be made only after a hearing as prescribed in the administrative procedure act, chapter 34.05 RCW.

Upon declaring ladybugs or other insects to be beneficial insects the director of agriculture may regulate or prohibit the commercial movement of such beneficial insects from this state. [1963 c 232 § 10.]

15.61.020 Intergovernmental cooperation. The director of agriculture may cooperate and enter into agreements with governmental agencies, other states, and agencies of the federal government to carry out the purposes and provisions of this chapter or rules adopted hereunder. [1963 c 232 § 11.]

15.61.030 Injunctions. The director of agriculture may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to said sections in the county where such violation has occurred, notwithstanding the existence of any other remedies at law. [1963 c 232 § 12.]

15.61.040 Nonapplicability to honey bees and insects used for research. The provisions of this chapter shall not apply to honey bees or to those beneficial insects used for research purposes. [1963 c 232 § 13.]

15.61.050 Violations—Penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1963 c 232 § 14.]

15.61.900 Severability—1963 c 232. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 232 § 15.]

Chapter 15.62
HONEY BEE COMMISSION

Sections

15.62.010 Purpose and findings. The purpose of this chapter is to advance the public welfare and education and to promote the interest, products, services, and stabilization of Washington's honey bee industry.

The legislature finds that:

(1) Increasing the consumption of products of the honey bee industry and promoting the use of its services and stabilizing the honey bee industry within the state and nation is a valid and necessary exercise of the power of the state to protect the public health, to provide for the economic development of the state, and to promote the welfare of the people of the state;

(2) Honey bee industry products produced and services provided in Washington make an important contribution to the agricultural industry of the state of Washington. The business of researching, marketing, and distributing such products and the promotion of its services is in the public interest;

(3) It is necessary to enhance the reputation of Washington honey bee industry products and services in domestic and national markets;

(4) It is necessary to promote and educate the public regarding the value of honey bee industry products and services, and to spread that knowledge throughout the state and nation to increase the awareness and consumption of honey bee products and the use of honey bee services;

(5) State and national markets for Washington honey bee industry products may benefit from promotion of honey bee products through education and advertising;

(6) It is necessary to stabilize the Washington honey bee industry, to enlarge its markets, and increase the consumption of Washington honey bee industry products and services to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment, and to provide for higher wage scales for agricultural labor and maintenance of a reasonable standard of living;

(7) Providing information to the public on the manner, cost, and expense of producing, and the care taken to produce and sell, honey bee industry products and services of the highest quality, the methods and care used in their preparation for market, and the methods of sale and distribution is in the public interest;

(8) It is necessary to protect the public by educating it on the various benefits of honey bee industry services, the food value of its products, and their industrial and medicinal uses. [1989 c 5 § 1.]

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

(1) "Affected person" means an apiarist, manufacturer, processor, first handler, broker, or volunteer who shall pay to the commission the minimum assessments required in RCW 15.62.140.

(2) "Apiarist" means any person, firm, partnership, association, or corporation who owns, operates, manages, or brokers ten or more honey bee (Apis mellifera) colonies or any volunteer participant having less than ten colonies in the state of Washington.

(3) "Bee colony" means a natural group of honey bees containing seven thousand or more workers and one or more queens, housed in a man-made hive with movable frames, and operated as a beekeeping unit.

(4) "Broker" means any person other than an apiarist who, for a fee, places or sets twenty-five or more bee colonies for pollination or buys and sells one thousand dollars or more per year of industry products he or she does not produce or manufacture.

(5) "Commission" means the Washington state honey bee industry commission or its authorized agents.

(6) "Department" means the department of agriculture.

(7) "Director" means the director of the department of agriculture.

(8) "First handler" means any person in Washington who imports industry products or bee supplies and equipment into Washington for processing, packing, or sale in the state of Washington.

(9) "Industry products" means queen bees, packaged bees, and items which are made by bees including, but not limited to, honey, pollen, bees wax, and propolis and items manufactured for use in the honey bee industry as enumerated under "manufacturer" in this section.

(10) "Manufacturer" means any person making bee supplies and equipment such as: Supers (hive boxes), frames, bees wax foundation, smokers, extractors, bee veils, pollen traps, queen rearing equipment, bee cages and packages, queen excluders, and other bee supplies used in the honey bee industry.

(11) "Person" means any individual, firm, partnership, or corporation engaged in the apiculture industry.

(12) "Processor" means any person processing, selling, marketing, or distributing bee industry products.

(13) "Retail sales" means those sales made directly to consumers whether apiarists, brokers, or persons involved in the apiculture industry, or the public. [1989 c 5 § 2.]

15.62.030 Commission established by referendum. The Washington state honey bee commission shall be established following approval of a referendum by a majority of the affected apiarists and brokers, as set forth in RCW 15.62.140(4) for assessment increases. [1989 c 5 § 3.]

15.62.040 Powers and duties of commission. The commission shall have the following powers and duties:

(1) To elect a chairperson and other officers as it deems advisable;

(2) To promulgate rules and regulations under the administrative procedure act, chapter 34.05 RCW, and RCW 15.04.200 as necessary to effectuate the purpose and policies of this chapter;

(3) To administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to fulfill the purpose thereof;

(4) To employ and discharge advertising agents, attorneys as permitted by the attorney general, agents, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(5) To establish offices, hire employees who shall be exempt from chapter 41.06 RCW, incur expenses which shall not exceed revenues, enter into contracts, and create such liabilities as are reasonable and proper for the administration of this chapter;

(6) To investigate and refer violations of this chapter to local prosecuting attorneys or special prosecutors appointed by the commission and the local prosecuting attorney;

(7) To contract for scientific research designed to improve production, pollination, management, quality, processing, and distribution and to develop and discover uses for products of the honey bee industry;

(8) To make in its name advertising contracts and other agreements necessary to promote the industry and bee products and services in state, national, and foreign markets;

(9) To keep accurate records of all commission dealings, which shall be open to public inspection and audit by authorized state agencies;

(10) To contract for research to develop more efficient methods of promoting the honey bee industry and its products and services;

(11) To develop and conduct educational programs for the benefit of industry and to inform the public regarding Washington's honey bee industry;

(12) To enter into contracts and agreements for purposes consistent with this chapter;

(13) To publish at least an annual report of its activities and financial status subject to audit by the state auditor;

(14) To establish an operating monetary reserve and carry over to subsequent fiscal periods any excess funds in the reserve: PROVIDED, That the reserve funds shall not exceed one fiscal period's budget. The reserve funds shall only be used to defray any expenses authorized under this chapter;

(15) To audit any affected person's records as described in RCW 15.62.200; and

(16) To consider the assessment of honey or manufactured bee supplies produced or sold in Washington. Assessments shall only be levied after a referendum is conducted and approved by a majority vote, as set forth in RCW 15.62.140(4), of persons engaged in the honey bee industry of Washington. [1989 c 5 § 13.]

15.62.050 Commission compositions—Eleven positions. The commission shall consist of the following members:

(1) Apiarist position one shall represent area one, which includes the counties of Whatcom, San Juan[,] Island, Skagit, Snohomish, and King; and

(2) Apiarist position two shall represent area two, which includes the counties of Pierce, Kitsap, Clallam, Jefferson, Grays Harbor, Mason, Thurston, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, [and] Skamania; and

(3) Apiarist positions three and four shall represent area three, which includes the counties of Kittitas, Yakima, Klickitat, and Benton; and

(4) Apiarist position five shall represent area four, which includes the counties of Okanogan, Chelan, and Douglas; and

(5) Apiarist position six shall represent area five, which includes the counties of Grant, Adams, Franklin, Walla Walla, Columbia, Garfield, Asotin, and Whitman; and

(6) Apiarist position seven shall represent area six, which includes the counties of Spokane, Lincoln, Ferry, Stevens, and Pend Oreille; [and]

(7) Position eight, appointed by the director, shall be a manufacturer or broker of industry products representing Washington residents engaged in the apiculture industry; and

(8) Position nine, appointed by the director, shall be a processor or first handler representing residents engaged in Washington's honey bee industry; and

(9) Position ten shall be the director of the Washington state department of agriculture, who shall be a nonvoting ex officio member; and

(10) Position eleven, appointed by the director, may be an affected person representing out-of-state interests who are not Washington residents but are active as affected persons in Washington. [1989 c 5 § 4.]

15.62.060 Position qualifications. (1) Commission positions one through seven shall be filled by persons who meet the following requirements:

(a) Resident of this state;

(b) Resident of the area they represent; and

(c) Actually engaged in owning, operating, or as a broker of bee colonies for the five years immediately preceding their election.

(2) Commission positions eight and nine shall be filled by persons who meet the following requirements:

(a) Resident of this state; and

(b) Actually engaged as a manufacturer, broker of industry products, processor, or first handler for the five years immediately preceding their election.

(3) Commission members shall be immediately disqualified if they no longer meet the qualifications during their terms of office. The vacancy on the commission shall be filled according to *section 38 of this act.

(4) Position eleven shall be filled by a person who qualifies under subsection (1)(c) or (2)(b) of this section and is not a resident of Washington. [1989 c 5 § 5.]

***Reviser's note:** The reference to "section 38 of this act" is incorrect. Apparently a reference to "section 6 of this act," codified as RCW 15.62.070, was intended.

15.62.070 Terms of office—Vacancies. (1) The regular terms of office of each elected member of the commission shall be three years, except that the term of office for the initial members shall be as follows:

(a) Positions for areas one, four, and seven - one year.

(b) Positions for areas two, five, and eight - two years.

(c) Positions for areas three, six, and nine - three years.

(d) If filled, position for area eleven - three years.

(2) No elected member of the board may serve more than two full consecutive three-year terms.

(3) Terms of office shall end on August 31 of the last year of the elected or appointed term.

(4) Any vacancies on the commission shall be filled by a person meeting the qualifications established in *section 37 of this act appointed by the other voting members of the commission. The appointee shall hold office for the remainder of the term, at which time an election for that position shall be conducted. [1989 c 5 § 6.]

***Reviser's note:** The reference to "section 37 of this act" is incorrect. Apparently a reference to "section 5 of this act," codified as RCW 15.62.060, was intended.

15.62.080 Apiarist members—Election. (1) Apiarist members of the commission shall be nominated and elected by the apiarists within the district they are to represent in the year in which a member's term expires. The candidate receiving the largest number of votes cast shall be elected. The election shall be by secret mail ballot and shall be conducted by the director, who shall be reimbursed for actual expenses of conducting the election by the commission.

(2) The director shall provide forms for the nomination of candidates to each affected person. The nomination form shall provide for the name of the person being nominated and the names of five persons supporting the nomination.

(3) The persons nominating the candidate shall affirm that the candidate meets the qualifications and is willing to serve by signing the nomination form.

(4) The nomination forms shall be returned to the director by June 30 of the election year, and the director shall not accept any nomination postmarked later than midnight of that date.

(5) In the event no nomination is submitted for a position, the director shall nominate at least two, but no more than three, qualified persons and place their names on the election ballot as nominees. Any qualified person may be elected by write-in ballot, even though his or her name was not placed in nomination.

(6) Ballots for electing commission members shall be mailed by the director to all apiarists and brokers in areas where elections are to be held no later than July 15. Ballots, to be valid, shall be returned to the director postmarked no later than July 31. Elected persons shall take office effective September 1 of the year elected except initial elections shall take place within one hundred twenty days after July 23, 1989. [1989 c 5 § 7.]

15.62.090 Notice, elections, referenda—Lists of apiarists, manufacturers, processors, and first handlers. (1)(a) The director shall cause a list to be prepared of all apiarists, as defined in RCW 15.62.020, from the list of apiarists registered with the department under RCW 15.60.030. A qualified person may, at any time, have his or her name placed on the list by registering with the department.

(b) The director shall cause a list to be prepared of manufacturers, processors, and first handlers. The list shall be prepared from any information the director has at hand or may readily obtain. A qualified person may, at any time, have his or her name placed on the list by notifying the department and providing such information as the department deems necessary to determine whether the person qualifies as a manufacturer, processor, or first handler under RCW 15.62.020.

(c) For all purposes of giving notice and conducting elections or referenda, the lists the director has on hand under this section, corrected up to the day next preceding the date for issuing notices or ballots, are, for purposes of this chapter, deemed to be the lists of all persons entitled to notice or to assent or dissent or to vote.

(2) Any person may file his or her name and address with the commission for the purpose of receiving notices regarding the activities of the commission. Persons who are not Washington residents but are active as affected persons in this state and who wish to be considered for appointment to position eleven on the commission may file their names with the director. A person desiring such consideration must supply such information as the director deems appropriate. [1989 c 5 § 8.]

15.62.100 Costs of elections and referendums—Reimbursement. The commission shall reimburse the director for the actual costs incurred in conducting the elections and referendums, and acquiring lists of affected persons. [1989 c 5 § 9.]

15.62.110 Quorum—Travel expenses. (1) A majority of the commission members shall constitute a quorum for the transaction of all business of the commission.

(2) Members of the commission shall be reimbursed for travel expenses, as prescribed by the commission, for each day spent in attendance at, or traveling to and from, commission meetings or when conducting authorized commission business. [1989 c 5 § 10.]

15.62.120 Certified copies of commission's proceedings, records, and acts—Admissible in court. Copies of the proceedings, records, and acts of the commission, when certified by the secretary, shall be admissible in any court and be evidence of the truth of the statements therein contained. [1989 c 5 § 11.]

15.62.130 Commission officers—Members' fidelity bonds. The commission may elect an executive secretary who is not a member and fix his or her compensation and may appoint a treasurer who shall sign all vouchers and receipts for moneys received by the commission. The commission shall purchase for each of its members a fidelity bond executed by a surety company authorized to do business in the state, in favor of the state and the commission, in a sum to be determined by the commission. [1989 c 5 § 12.]

15.62.140 Assessments—Minimum—Increase. (1) The commission shall collect annual assessments as follows:

(a) Twenty-five cents for each colony operated by an apiarist or broker in Washington at any time in a calendar year. Each colony shall be assessed only once per calendar year. There shall be a minimum assessment of ten dollars.

(b) The sale of a business enterprise by an apiarist or broker shall not be assessed.

The provisions of this subsection (1) are effective only if the referendum required by RCW 15.62.030 on the creation of the commission is adopted.

(2) Subject to approval by referendum, the commission shall have the power and duty to increase the amount of the assessments as necessary to fulfill the purposes of this chapter.

(3) In determining the necessity for an assessment increase, the commission shall consider:

(a) The purpose of the commission;

(b) The extent and probable cost of required research, promotion, and advertising;

(c) The extent of public convenience, interest, and necessity; and

(d) The expected revenue from the increased assessment.

(4) The increase in assessment shall not become effective until approved by a majority of the affected persons voting in a referendum conducted by the commission. The referendum must be approved by:

(a) Either fifty-one percent of the apiarists and brokers representing sixty-six percent of the colonies registered in Washington in the twelve months preceding voting; or

(b) Sixty-six percent of the apiarists and brokers representing fifty-one percent of the colonies registered in Washington in the twelve months preceding voting; and

(c) Either fifty-one percent of manufacturers, processors, and first handlers representing sixty-six percent of industry products sold in Washington by its residents; or

(d) Sixty-six percent of manufacturers, processors, and first handlers representing fifty-one percent of industry products sold in Washington by its residents. [1989 c 5 § 14.]

15.62.150 Assessments—Collection—Deposit in local fund—Gifts, grants, and endowments—Failure to remit assessment. (1) All assessments shall be collected by the commission on a quarterly basis or as otherwise determined by the commission.

(2) The commission shall create a local fund in a local financial institution approved by the director and shall deposit therein, each day, all moneys received by the commission except an amount for petty cash as fixed by commission regulations. Moneys in the fund shall only be expended for the purposes of this chapter. Moneys in the fund are not subject to appropriation.

(3) The commission fund is authorized to receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(4) If an affected person fails to remit any assessment, such assessment plus interest at the rate of one percent per month from the due date shall constitute a personal debt of the person assessed or who otherwise owes the assessment and shall be due and payable within thirty days from the date it becomes first due the commission. In the event of failure of the person to pay due and payable assessments, the commission may bring civil action against the person in a state court of competent jurisdiction for collection thereof, together with any reasonable costs including attorneys' fees. The action shall be tried and judgment rendered as in any other cause of action for debt due and payable. This provision is in addition to the penalty section contained in RCW 15.62.220. [1989 c 5 § 15.]

15.62.160 Assessment error—Refund. A person shall be entitled to a refund of assessed money held by the commission fund when it has been determined by the commission that the affected person was assessed and made payment in error. [1989 c 5 § 16.]

15.62.170 Recordkeeping. (1) Each apiarist and broker shall keep accurate records of the number of colonies owned or operated during each calendar year.

(2) Each manufacturer shall keep accurate records of gross sales of industry products or manufactured goods sold in the state of Washington.

(3) Each processor shall keep accurate records of the pounds of honey sold in the state of Washington.

(4) Each first-handler shall keep accurate records of the industry products sold in the state of Washington.

(5) The records shall contain information required by the commission and shall be preserved for a period of five years.

(6) The records shall be made available for audit upon request of the commission or its agent, as authorized in RCW 15.62.040 and 15.62.200. [1989 c 5 § 17.]

15.62.180 Reporting. Each affected person shall, as required, file with the commission a return under oath on forms to be furnished by the commission, stating the information requested by the commission regarding the ownership, handling, processing, manufacturing, delivering, shipping, sale, and brokering of various honey bee industry products and activities as defined in RCW 15.62.020. The report shall cover the period or periods of time prescribed by the commission. [1989 c 5 § 18.]

15.62.190 Promotional printing and literature—Exempt from public printing requirements. The restrictive provisions of chapter 43.78 RCW shall not apply to promotional printing and literature for the Washington state honey bee commission. [1989 c 5 § 19.]

Public printer—Public printing: Chapter 43.78 RCW.

15.62.200 Audit of records of affected persons. The commission through its agents may audit the records of any affected person for the purpose of enforcing the provisions of this chapter. The commission must first notify the affected person of their intention to audit and may request supporting documents of the affected person regarding reports submitted on commission forms under RCW 15.62.180. [1989 c 5 § 20.]

15.62.210 Nonliability of state—Salaries, expenses, and liabilities. The state shall not be liable for the acts or on the contracts of the commission, nor shall any member or employee of the commission be liable on its contracts.

All salaries, expenses, and liabilities incurred by persons employed or contracting under this chapter for the commission shall be limited to, and payable only from, the funds collected hereunder. [1989 c 5 § 21.]

15.62.220 Violations—Misdemeanor. Any person who violates or aids in the violation of any provision of this chapter or any rule or regulation of the commission shall be guilty of a misdemeanor. [1989 c 5 § 22.]

15.62.230 Prosecutions—Superior court jurisdiction—Equitable remedies. (1) Any prosecution brought under this chapter may be instituted in any county in which

the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(2) The commission is hereby vested with the authority to utilize the services of the local prosecuting attorneys or special prosecutors as agreed upon by the commission and the local prosecutor for purposes of carrying out the prosecution of cases brought under this chapter.

(3) The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter, and the rules and regulations of the commission issued hereunder, and to prevent and enjoin and restrain violations thereof. [1989 c 5 § 23.]

15.62.300 Termination, suspension, or continuance of commission. In the seventh year following the inception of the commission, a referendum shall be conducted by the department of agriculture to determine if the commission is still desired by the beekeeping industry in Washington. The commission shall continue if the director finds that affected apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such continuance, otherwise it shall be terminated or suspended as in RCW 15.62.310. [1989 c 5 § 25.]

15.62.310 Termination or suspension of commission. The commission shall be terminated or suspended if the director finds that apiarists and brokers voting in a referendum conducted as for an assessment increase in RCW 15.62.140(4) voted in favor of such termination or suspension. A referendum may be called by a majority of the commission or by twenty percent of the resident affected persons representing twenty percent of the colonies and industry products sold in Washington.

Any moneys in the treasury at the time of an affirmative termination or suspension vote shall first be used to effect all acts associated with the termination or suspension procedures and liquidation of the affairs of the commission.

Any residual funds not necessary to defray the expenses of termination or suspension of the commission shall be turned over to Washington State University to be used in conducting research on the honey bee Apis mellifera. [1989 c 5 § 26.]

15.62.900 Liberal construction. This chapter shall be liberally construed to effectuate the policies and purpose set forth herein. [1989 c 5 § 24.]

15.62.910 Severability—1989 c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 5 § 27.]

Chapter 15.63
WASHINGTON STATE WHEAT COMMISSION

Sections

15.63.010 Declaration of policy and police power. It is in the public interest of all the people to protect the reputation and welfare of the wheat industry of this state. Without a commission to represent it, the wheat industry cannot effectively help itself in developing foreign and domestic markets, in promoting research to better the quality of Washington wheat, or in protecting the consumer by maintaining proper grades and standards. A wheat commission is vitally necessary to improve the competitive position of Washington wheat producers with respect to states already having such commissions, and to assist these producers in obtaining a fair return from their labor, their farms and the wheat they produce. Such a commission must be endowed with such authority as will enable it to cope swiftly and effectively with our rapidly changing economic conditions as they may affect the wheat industry. Therefore this act of the legislature is passed to establish a wheat commission, composed of wheat producers familiar with the complex problems peculiar to the industry, and designed to carry out the purposes of the act as herein set forth, under the supervision of the director of agriculture. The provisions of this act are enacted in the exercise of the police powers of this state for the broad purpose of protecting the health and economic welfare not only of the wheat industry, but of labor and industry dependent upon wheat, and of the people of the state as a whole. [1961 c 87 § 1.]

15.63.020 Definitions. As used in this chapter, the following terms shall have the following meanings:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representatives.

(2) "Person" means any individual, firm, corporation, trust, association, partnership, society or any other organization of individuals.

(3) "Producer" means any person engaged in the business of producing wheat, or having an interest in the production of wheat for market in commercial quantities.

(4) "Commercial quantities" means five hundred or more bushels of wheat produced for market in any calendar year by any producer.

(5) "Wheat" means all kinds and varieties of wheat grown in the state of Washington.

(6) "Wheat commission" and "commission" are synonymous and mean the commission established pursuant to the provisions of this chapter.

(7) "Fiscal year" means the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive.

(8) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing wheat which he has purchased or acquired from a producer, or which he is shipping for or on behalf of a producer, and shall include any lending agency for a commodity credit corporation loan to producers.

(9) "Commercial channels" means the sale of wheat for use as food, feed, seed or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat, or products produced from wheat. [1961 c 87 § 2.]

15.63.030 Purposes enumerated. The purposes of this chapter are:

(1) To enable wheat producers of Washington with the aid of the state to help themselves in developing foreign and domestic markets.

(2) To provide methods and means for the development of new and larger markets for wheat grown within Washington.

(3) To carry on educational and promotional programs to help develop markets for Washington wheat.

(4) To provide methods and means for participation in whatever federal or other programs have been or may be established to make available gifts or grants for the promotion of marketing of Washington wheat in foreign countries.

(5) To promote and assist in carrying into effect production research into such matters as the development of superior varieties of wheat; methods by which yield in wheat may be increased; disease and the development of disease-resistant varieties of wheat; and more efficient means of processing, handling and marketing of wheat.

(6) To investigate and make recommendations against trade practices detrimental to the wheat industry.

(7) To promote the maintenance of uniform grades and standards suitable to marketing needs and adequate to protect the consumer. [1961 c 87 § 3.]

15.63.040 Creation of wheat commission—Composition—Qualifications. There is hereby created the Washington state wheat commission. The commission shall be composed of five members who shall be producers elected as provided in RCW 15.63.060 and two members who shall be appointed by the producer members so elected. The director shall be an ex officio member of the commission without vote.

The members of the commission shall be citizens and residents of the state and over the age of twenty-five years. The elective producer members shall be producers of wheat in the district in and for which they are nominated and elected. The qualifications of members of the commission must continue during their term of office. [1961 c 87 § 4.]

15.63.050 Districts created—Producer members to be elected from each district. For the purposes of this chapter, the state of Washington is divided into five districts as follows:

(1) District 1: The counties of Ferry, Lincoln, Pend Oreille, Spokane, and Stevens;

(2) District 2: The county of Whitman;

(3) District 3: The counties of Asotin, Columbia, Garfield, and Walla Walla;

(4) District 4: The counties of Adams, Chelan, Douglas, Grant, and Okanogan;

(5) District 5: All other counties of the state of Washington, including the counties of Western Washington and the counties of Benton, Franklin, Kittitas, Klickitat, and Yakima in Eastern Washington.

From each district a producer member shall be elected to the commission. [1961 c 87 § 5.]

15.63.060 Terms of members. The term of office for each member shall be three years from the date of election and until his successor is elected and qualified, except, however, that the first terms of the initial elective producer members of the commission whose terms begin on December 31, 1961 shall be as follows: Terms of members from districts 1 and 2 shall terminate December 31, 1962; terms of members from districts 3 and 4 shall terminate December 31, 1963; and terms of members from district 5 shall terminate December 31, 1964.

The two appointed members of the commission shall be elected to terms of three years by a majority vote of the elected producer members at the first commission meeting, except, however, that the term of the member first appointed during the meeting shall terminate December 31, 1963, and the term of the remaining appointed member shall terminate December 31, 1964. Thereafter such positions shall be filled by majority vote of the elected producer members at the last meeting held prior to termination of term of office. [1961 c 87 § 6.]

15.63.070 Nomination and election procedure. Nominations to fill vacancies in the commission shall be made by written petition signed by not less than five wheat producers residing in the district wherein the vacancy will occur. Nominating petitions shall be sent by the director upon request to any wheat producer residing in such district. Such petitions shall be sent not earlier than September 17

and not later than October 2. Nominating petitions must be filed with the director not earlier than October 8 and not later than October 13.

Members of the commission shall be elected by secret mail ballot under supervision of the director. Ballots shall be mailed not earlier than October 18 and not later than November 2 to all wheat producers listed in the district where a vacancy will occur. They shall be returned to the director postmarked not later than November 16.

In establishing a list of producers, the director shall use the most current and complete list on file in the state department of agriculture. For any areas of the state for which such a list is not complete or current, the director may establish a supplementary list in the following manner: He shall publish a notice to wheat producers in the area involved, requiring them to file with the director a certified report showing the producer's name, mailing address, and the yearly average quantity of wheat produced by him in the five years preceding the date of the notice or in such lesser time as the producer has produced wheat. The notice shall be published once a week for four consecutive weeks in one or more newspapers of general circulation within the district. All reports shall be filed with the director within twenty days from the last date of publication of the notice, or within thirty days after the mailing of the notice to affected producers, whichever is the later. The director shall keep his list of producers at all times as current and complete as possible and may require information from affected producers at various times in accordance with rules and regulations prescribed by him.

Members of the commission shall be elected by a majority of votes cast by the wheat producers residing in the district, each producer being entitled to one vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

The nomination and election of the initial members of the commission whose terms of office commence on December 31, 1961 shall be in accordance with the procedure set forth in this section.

The director shall provide reasonable public notice of the impending vacancy in each district in which a vacancy may occur, such notice to consist at a minimum of publication once a week for four consecutive weeks in one or more newspapers of general circulation within the district, and shall call for nominations in such notice: PROVIDED, That nonreceipt of the notice by any interested person shall not invalidate the election. [1961 c 87 § 7.]

15.63.080 Effective date of chapter—Nomination and election procedure, terms of office postponed and modified if prior law held invalid. In the event that by reason of the contingency specified in RCW 15.63.910, this chapter shall take effect between August 17, 1961 and February 28, 1962, the nomination and election procedures for the first election of the commission shall be postponed so that the assessment authorized by this chapter may be made on the 1962 wheat crop. Should this occur nominating petitions shall be sent by the director not earlier than the 17th day of the month following the month in which the chapter takes effect. From that time, nomination and election procedures shall continue on a time schedule parallel to that specified in RCW 15.63.060 and 15.63.070. Terms of office of commission members shall begin on the last day of the month bearing the same relation to the month in which the earliest nominating petitions are filed as December does to September. Terms of office of commission members elected under the emergency procedure set forth in this section shall terminate as set forth in RCW 15.63.060, without change as a result of the adoption of such procedure. [1961 c 87 § 8.]

Reviser's note: As to the effective date of this chapter [1961 c 87], see RCW 15.63.910 and 15.63.920.

15.63.090 Vacancies. (1) In the event that an elective position becomes vacant because of failure to qualify, resignation, disqualification, removal, death, or for any other reason, such position shall be filled by majority vote of the remaining members of the commission until an election can be held in the manner provided for in RCW 15.63.070. At such election a commissioner shall be elected to fill the balance of the unexpired term.

(2) In the event that a nonelective position becomes vacant for reasons other than expiration of the term of office, the position shall be filled for the balance of the unexpired term by majority vote of the remaining members of the commission at the first meeting following the occurrence of the vacancy. [1961 c 87 § 9.]

15.63.100 Removal of members—Notice and hearing. A member of the commission may be removed by the director for malfeasance, misfeasance or neglect of duty, after being given a copy of written charges and an opportunity to be heard publicly. In addition to other causes, failure to retain the qualifications for holding office is sufficient cause for removal. [1961 c 87 § 10.]

15.63.110 Per diem and travel expenses. Members of the commission shall receive the sum of twenty dollars for each day actually spent in attendance at or in traveling to and from meetings of the commission, or on special assignment for the commission, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 18; 1961 c 87 § 11.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.63.120 Meetings—Notice—Quorum—Procedure—Office—Records open to inspection. (1) The commission shall meet as soon as practicable for the purpose of organizing. Thereafter the commission shall meet at least once every three months regularly at such time and place as shall be fixed by resolution of the commission.

(2) The commission shall hold an annual meeting for the presentation of an annual report and proposed budget. Notice of time and place of the annual meeting shall be given by the commission at least ten days prior thereto through notification sent to the regular wire services, newspapers, and radio, and television stations.

(3) The commission shall establish by resolution, the time, place and manner of calling special meetings. Reasonable notice of such meetings shall be given to each commission member and to the public.

(4) Five members shall constitute a quorum. Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(5) The procedure followed by the commission shall be governed in all applicable respects by the provisions of chapter 34.05 RCW, the administrative procedure act, as in force on *the effective date of this chapter, or as thereafter amended.

(6) The commission shall, by resolution, establish and maintain an office where books, records, and minutes shall be kept.

(7) All meetings of the commission shall be open to the public. All of its records, books and minutes shall be available for public inspection. [1961 c 87 § 12.]

***Reviser's note:** As to the effective date of this chapter [1961 c 87], see RCW 15.63.080, 15.63.910, and 15.63.920.

15.63.130 Director's right to approve or disapprove orders, rules, or directives—Review. The director shall attend each meeting of the commission, and shall retain the right to approve or disapprove every order, rule or directive issued by the commission or any action taken by it, such approval or disapproval to be based on whether or not he believes the order, rule, or directive in question to have been issued in conformity with the purposes of this chapter and the powers granted to effectuate them. The decision of the director shall be final, subject to the judicial review authorized by RCW 15.63.240. [1961 c 87 § 13.]

15.63.140 Powers and duties in general. (1) Consistently with the general purposes of this chapter, it shall be the duty of the commission to establish the policies to be followed in the effectuation of its provisions.

(2) In the administration of this chapter the commission shall have the following particular duties and powers:

(a) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties;

(b) To administer, enforce, direct and control the provisions of this chapter;

(c) To establish plans and conduct programs for education, advertising and sales promotion for the purposes of maintaining present markets, to create new or larger markets for wheat grown in the state of Washington, and to promote improved public understanding of the problems confronting the wheat industry;

(d) To provide for carrying on research studies to find more efficient methods of production, processing, handling and marketing of wheat;

(e) To make studies and recommendations for the improvement of standards and grades of wheat;

(f) To investigate, report and recommend the correction of policies and practices detrimental to the Washington wheat industry;

(g) To collect the assessments of producers as provided for in this chapter and to expend the same in accordance with the purposes and provisions thereof;

(h) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(i) To accept and receive gifts and grants and expend the same;

(j) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms as it may deem appropriate to assist it in carrying out the purposes of this chapter: PROVIDED, That any attorney selected must be approved by the attorney general;

(k) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(l) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organization or agencies for the purposes specified in this chapter;

(m) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission, whether domestic or foreign, whenever such action is not prohibited by law, for the purpose of promoting the general welfare of the wheat industry, and particularly for the purpose of assisting in the sale and distribution of wheat in domestic or foreign commerce; and to expend its funds, or such portion thereof as it may deem advisable for such purpose, and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of wheat in foreign countries;

(n) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter;

(o) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by agencies of the state;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To establish an interest bearing reserve fund in any bank selected by the commission which is an approved state depositary, if, in the opinion of the commission, the establishment of such a fund will further the purposes of this chapter;

(s) To exercise all express and implied rights, powers and authority that may be necessary to perform and carry out the expressed purposes of this chapter, and all of the purposes reasonably implied incidentally thereto, and lawfully connected therewith. [1961 c 87 § 14.]

15.63.150 Assessments—Imposed—Collection—Lien. It is hereby assessed and levied and the commission shall collect an assessment at the rate of one-fourth cent per bushel upon the sale or disposition of all wheat grown in this state and sold through commercial channels, such assessment to be used for the benefit of the wheat industry as provided

in this chapter. The assessment shall begin with and include wheat harvested in the crop of the fiscal year 1962, and shall include each and every crop thereafter. It shall be levied and assessed to the producer at the time of sale, and shall be deducted by the first purchaser from the price paid to the producer at the time of sale, or, in the case of a pledge or mortgage of wheat as a security for a loan under any federal price support program or otherwise, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan, at the time the loan is made by the agency or person making the loan. The assessment shall be deducted as provided in this section whether the wheat is stored in this or any other state. No assessment shall be levied or collected on wheat grown and used by the producer for feed, seed or personal consumption. The assessment constitutes a lien prior to all other liens and encumbrances upon such wheat. [1961 c 87 § 15.]

15.63.160 Method of collecting assessments. The commission shall by rule or regulation prescribe the method of collection of the assessment, and for that purpose may require handlers receiving wheat from the producer, including warehousemen and processors, to collect producer assessments from producers whose wheat they handle and remit the same to the commission. [1961 c 87 § 16.]

15.63.170 Records, returns of producers and handlers—Form, inspection. Each producer and handler shall keep a complete and accurate record of all wheat grown, handled, shipped, or processed by him. This record shall be in such form and contain such information as the commission may by rule and regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents.

Each producer and handler shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of wheat handled, shipped, or processed by him during the period prescribed by the commission. The return shall contain such further information as the commission shall require.

The commission may inspect the records of any producer or handler during reasonable business hours for the purpose of enforcing this chapter and the collection of the assessment. [1961 c 87 § 17.]

15.63.180 Credit and refund to producers for excess payments. At the end of each fiscal year, the commission shall credit each producer with any amount over one dollar paid by such producer in excess of one-fourth cent per bushel of wheat. Refund may be made upon satisfactory proof given by the producer in accordance with reasonable rules and regulations prescribed by the commission. [1961 c 87 § 18.]

15.63.190 Secretary-treasurer—Bond. The commission shall appoint a secretary-treasurer who shall file with it a bond executed by a surety company authorized to transact surety business in the state of Washington, in favor of the commission and the state, in the penal sum of fifty thousand dollars, guaranteeing the faithful performance of his duties and strict accounting of all funds of the commission. [1961 c 87 § 19.]

15.63.200 Deposits of funds—Use. All moneys received or collected by the commission, or by any other state official from the assessment herein levied or from any other source in accordance with the terms and provisions of this chapter, shall be paid to the secretary-treasurer, deposited in such banks, which are approved state depositaries, as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall be applicable to any moneys received or collected under the terms of this chapter. Moneys received or collected hereunder shall be used only to pay for costs and expenses incurred in effectuating the provisions and purposes of this chapter. [1961 c 87 § 20.]

15.63.210 Liability of commission's assets—Immunity of state, commission, employees, etc., from liability. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee or agent of the commission in his individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees shall be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member shall be liable for the default of any other member. [1961 c 87 § 21.]

15.63.220 Penalties. Any person who violates or aids in the violation of any provision of this chapter, or any person who violates or aids in the violation of any rule or regulation of the commission shall be guilty of a misdemeanor. [1961 c 87 § 22.]

15.63.230 Enforcement—Injunctions—Venue. All county and state enforcement officers and all employees and agents of the department of agriculture shall aid in the enforcement of this chapter. The superior courts are vested with jurisdiction to enforce the provisions thereof, and the rules and regulations issued thereunder, and to prevent and restrain violations thereof. The commission may bring in its own name an action to enjoin the violation or threatened violation of any provision of this chapter, or any rules adopted under this chapter, notwithstanding the existence of any other remedy at law, and for cause shown may obtain upon prompt hearing a temporary or permanent injunction restraining any person from such violation or threatened violation. Any prosecution brought under this chapter may be instituted in any county of which the defendant, or any defendant, is a resident, or in which the violation was

committed, or in which the defendant, or any defendant, has his principal place of business. [1961 c 87 § 23.]

15.63.240 Judicial review. Any party aggrieved by any order, rule or regulation issued by the commission, or by any action taken by it, or by any action taken by the director in approving or disapproving any action of the commission, may apply to the superior court of the state of Washington in the county in which such party is a resident or has his principal place of business for a review of such decision. Where applicable, the procedure for such a review shall be that specified in chapter 34.05 RCW, the administrative procedure act, as in force on *the effective date of this chapter, or as thereafter amended. The court may thereupon take such action as in its opinion the law requires and its decision shall be appealable to the supreme court or the court of appeals of this state subject to the laws and rules of court relating to appeals. [1972 ex.s. c 8 § 1; 1971 c 81 § 55; 1961 c 87 § 24.]

***Reviser's note:** As to the effective date of this chapter [1961 c 87], see RCW 15.63.080, 15.63.910, and 15.63.920.

15.63.900 Severability—1961 c 87. If any section, sentence, clause, or word of this chapter shall be held to be unconstitutional, the invalidity of such section, sentence, clause, or word shall not affect the validity of any other provisions of this chapter, it being the intent of the legislature to enact the remainder of this chapter, notwithstanding the unconstitutionality of any such part. [1961 c 87 § 25.]

15.63.910 Operative, termination date of chapter—Effect of other laws. This chapter shall not take effect and become operative unless and until such time as the wheat commission created by the Marketing Order for Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, is declared in a final decision of the supreme court of the state of Washington to have been invalidly created either by reason of the unconstitutionality, in whole or in part, of said chapter or for any other reason. This chapter has been passed in order that continuity of wheat commission activities may be assured throughout the biennium and in the future; therefore, in the event the existing wheat commission should be held by the supreme court of the state of Washington to have been constitutionally and validly created, this chapter shall be of no force and effect whatsoever. [1961 c 87 § 26.]

Order creating wheat commission upheld: Robison v. Dwyer, 58 Wn. (2d) 576, 364 P. (2d) 521 (1961).

15.63.920 Conditional emergency clause. Should the wheat commission created by the Marketing Order for Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, be declared to have been unconstitutionally or invalidly created this chapter will become necessary for the preservation of the public peace, health and safety, and the support of the state government and its existing public institutions, and upon the occurrence of that contingency, shall take effect immediately. [1961 c 87 § 27.]

Chapter 15.64
FARM MARKETING

Sections

15.64.010 Director's duties and powers. The director shall investigate and promote the economical and efficient distribution of farm products, and in so doing may cooperate with federal agencies and agencies of this and other states engaged in similar activities. For such purposes he may:

(1) Maintain a market news service by bulletins and through newspapers, giving information as to prices, available supplies of different farm products, demand in local and foreign markets, freight rates, and any other data of interest to producers and consumers;

(2) Aid producers and consumers in establishing economical and efficient methods of distribution, promoting more direct business relations by organizing cooperative societies of buyers and sellers and by other means reducing the cost and waste in the distribution of farm products;

(3) Investigate the methods of middlemen handling farm products, and in so doing, he may hear complaints and suggestions and may visit places of business of all such middlemen and may examine under oath, the officers and employees thereof;

(4) If he finds further legislation on this subject advisable, he shall make recommendations thereon to the governor not later than the fifteenth of November of each even-numbered year;

(5) Investigate the possibilities of direct dealing between the producer and consumer by parcel post and other mail order methods;

(6) Assist in the obtaining and employment of farm labor, and to that end cooperate with federal, state and municipal agencies engaged in similar work;

(7) Investigate the methods, charges and delays of transportation of farm products and assist producers in relation thereto. [1961 c 11 § 15.64.010. Prior: 1917 c 119 § 3; RRS § 2876.]

15.64.030 Studies of farm marketing problems—Rules. The director shall enact rules and regulations governing the pursuit of technical studies of farm marketing problems. Said studies shall be under the supervision of the director of the experimental station of Washington State University. The extension service of Washington State University shall provide for dissemination to the public of knowledge gained by such studies. [1961 c 11 § 15.64.030. Prior: 1947 c 280 § 2; Rem. Supp. 1947 § 2909-2.]

15.64.040 Use of funds for studies—Joint studies with other agencies. Moneys appropriated to the department for agricultural marketing research shall be expended by the department to further studies by the department, the experiment station of Washington State University and the extension service of Washington State University. The studies shall be made jointly or in conjunction with those

made by the United States Department of Agriculture as provided for in the Flannigan-Hope Act, Title II "The Agricultural Marketing Act of 1946" Public Law 733. All funds appropriated shall be expended jointly and as matching funds with any federal funds made available for such purposes. [1961 c 11 § 15.64.040. Prior: 1947 c 280 § 1; Rem. Supp. 1947 § 2909-1.]

Chapter 15.65

WASHINGTON STATE AGRICULTURAL ENABLING ACT OF 1961—COMMODITY BOARDS

Sections

Agricultural processing and marketing associations: Chapter 24.34 RCW.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.

15.65.010 Short title. This chapter shall be known and may be cited as the Washington state agricultural enabling act. [1961 c 256 § 1.]

15.65.020 Definitions. The following terms are hereby defined:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative. The phrase "director or his designee" means the director unless, in the provisions of any marketing agreement or order, he has designated an administrator, board or other designee to act for him in the matter designated, in which case "director or his designee" means for such order or agreement the administrator, board or other person(s) so designated and not the director.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(5) "Agricultural commodity" means any animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(7) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(8) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(9) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(10) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer of an affected commodity. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he produces, and a handler with respect to the agricultural commodities which he handles, including those produced by himself.

(13) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(14) "Member of a cooperative association" means any producer who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(15) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) Selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(16) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent man engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent man engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the

handling operation in which such commodity or product thereof is so handled. In either case the director may in his discretion: (a) Determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he finds to be similarly situated.

(17) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(18) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(19) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(20) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter.

(21) "Person" as used in this chapter shall mean any person, firm, association or corporation. [1986 c 203 § 15. Prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.65.030 Declaration of purpose and police power. The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of this chapter to promote the general welfare of the state by enabling producers of agricultural commodities to help themselves, in establishing orderly, fair, sound, efficient and unhampered marketing, grading and standardizing of the commodities they produce, and in promoting and increasing the sale and proper use of such commodities. This chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety and general welfare of the people of this state. [1961 c 256 § 3.]

15.65.040 Declaration of policy. It is hereby declared to be the policy of this chapter:

(1) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(2) To enable agricultural producers of this state, with the aid of the state: (a) To develop, and engage in research for developing, better and more efficient production, marketing and utilization of agricultural products; (b) to establish orderly marketing of agricultural commodities; (c) to provide for uniform grading and proper preparation of agricultural commodities for market; (d) to provide methods and means (including, but not limited to, public relations and promotion) for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this state and for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market; (e) to eliminate or reduce economic waste in the marketing and/or use of agricultural commodities; (f) to restore and maintain adequate purchasing power for the agricultural producers of this state; and (g) to accomplish all the declared policies of this chapter.

(3) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times. [1961 c 256 § 4.]

15.65.050 Director to enforce and administer chapter—Marketing agreements, orders issued, amended, terminated only under chapter, notice, grounds for amendments and termination. The director shall administer and enforce this chapter and it shall be his duty to carry out its provisions and put them into force in accordance with its terms, but issuance, amendment, modification, suspension and/or termination of marketing agreements and orders and of any terms or provisions thereof shall be accomplished according to the procedures set forth in this chapter and not otherwise. Whenever he has reason to believe that the issuance, amendment or termination of a marketing agreement or order will tend to effectuate any declared policy of this chapter with respect to any agricultural commodity, and in the case of application for issuance or amendment ten or more producers of such commodity apply or in the case of application for termination ten percent of the affected producers so apply, then the director shall give due notice of, and an opportunity for, a public hearing upon such issuance, amendment or termination, and he shall issue marketing agreements and orders containing the provisions specified in this chapter and from time to time amend or terminate the same whenever upon compliance with and on the basis of facts adduced in accordance with the procedural requirements of this chapter he shall find that such agreement, order or amendment:

(1) Will tend to effectuate one or more of the declared policies of this chapter and is needed in order to effectuate the same.

(2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with the applicable provisions of this chapter.

(3) Has been approved or favored by the percentages of producers and/or handlers specified in and ascertained in accordance with this chapter. [1961 c 256 § 5.]

15.65.055 Regulatory authority on the production of rapeseed by variety and location. The legislature finds that the production of marketable rapeseed within this state is in the interest of the public welfare. The legislature further finds that the production of incompatible varieties of rapeseed in close geographical proximity adversely affects the purity and marketability of rapeseed, and that it is in the public interest to establish geographical districts and buffer zones wherein the production of rapeseed may be restricted by variety.

For the purpose of rapeseed production in the state of Washington, the director of the department of agriculture shall have the regulatory authority on the production of

rapeseed by variety and geographic location until such time as a rapeseed commodity commission is formulated. Once formed, the rapeseed commodity commission shall assume the regulatory authority on the production of rapeseed by variety and geographic location in the state of Washington. [1986 c 203 § 21.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.65.060 Form, filing of proposed agreement, order, amendment, termination and other proceedings. The director shall cause any proposed marketing agreement, order, amendment or termination to be set out in detailed form and reduced to writing, which writing is herein designated "proposal." The director shall make and maintain on file in the office of the department a copy of each proposal and a full and complete record of all notices, hearings, findings, decisions, assents, and all other proceedings relating to each proposal and to each marketing agreement and order. [1961 c 256 § 6.]

15.65.070 Notice of hearing on proposal—Publication—Contents. The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than two days in one or more newspapers of general circulation as the director may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail a copy of such notice to all producers and handlers within the affected area who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department. [1987 c 393 § 5; 1985 c 261 § 2; 1979 c 154 § 4; 1961 c 256 § 7.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.65.080 Hearings public—Oaths—Record—Administrative law judge, powers. Every hearing held pursuant to this chapter shall be public and all testimony shall be received under oath and a permanent record thereof maintained. An administrative law judge appointed under chapter 34.12 RCW may preside over any inquiry, investigation, hearing, or proceeding held pursuant to this chapter and for such purpose such examiner may exercise any power herein conferred upon the director in connection therewith, including the power to administer oaths, examine witnesses and to issue subpoenas. At each such hearing the director or the administrative law judge shall receive evidence with respect to all of the matters and things upon which he must make a finding. [1981 c 67 § 18; 1961 c 256 § 8.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

15.65.090 Subpoenas—Compelling attendance of witnesses, fees—Immunity of witnesses. In any and every hearing conducted pursuant to any provision of this chapter the director and/or such examiner shall have the power to issue subpoenas for the production of any books, records or documents of any kind and to subpoena witnesses to be produced or to appear (as the case may be) in the county wherein the principal party involved in such hearing resides. No person shall be excused from attending and testifying or from producing documentary evidence before the director in obedience to the subpoena of the director on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no natural person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him: PROVIDED, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The superior court of the county in which any such hearing or proceeding may be had, may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. In case any witness refuses to attend or testify or produce any papers required by the subpoena, the director or his examiner shall so report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice was given of the time and place of attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the fees and mileage of the witness have been paid or tendered to him in accordance with RCW 2.40.020 and that he has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the notice and subpoena, or has refused to answer questions propounded to him in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel such witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there show cause why he has not responded to the subpoena. A certified copy of the show cause order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued, the court shall enter a decree that said witness appear at the time and place fixed in the decree and testify or produce the required papers, and on failing to obey said decree the witness shall be dealt with as for contempt of court. [1961 c 256 § 9.]

15.65.100 Director's findings and recommended decision, delivery of copies—Taking official notice of facts from other agencies. The director shall make and publish findings based upon the facts, testimony and evidence received at the public hearings together with any other relevant facts available to him from official publications of the United States or any state thereof or any institution of recognized standing and he is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing

and/or required by this chapter and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. [1961 c 256 § 10.]

15.65.110 Filing objections to recommended decision—Final decision—Waiver. After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his discretion omit compliance with the provisions of this section. [1961 c 256 § 11.]

15.65.120 Contents and scope of recommended and final decision—Delivery of copies. The recommended decision shall contain the text in full of any recommended agreement, order, amendment or termination, and may deny or approve the proposal in its entirety, or it may recommend a marketing agreement, order, amendment or termination containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The final decision shall set out in full the text of the agreement, order, amendment or termination covered thereby, and the director shall issue and deliver or mail copies of said final decision to all producers and handlers within the affected area who may be directly affected by such final decision and whose names and addresses appear, on the day next preceding the day on which such final decision is issued, upon the lists of such persons then on file in the department, and to all parties of record appearing at the hearing, or their attorneys of record. If the final decision denies the proposal in its entirety no further action shall be taken by the director. [1985 c 261 § 3; 1961 c 256 § 12.]

15.65.130 Agreements binding only on those who assent in writing—Agreement not effective until sufficient signatories to effectuate chapter—When effective. With respect to marketing agreements, the director shall after publication of his final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: PROVIDED, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and PROVIDED, FURTHER, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he shall find in addition to the other findings specified in this chapter that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes of this chapter and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration and enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto. [1961 c 256 § 13.]

15.65.140 Minimum assent requirements prerequisite to order or amendment affecting producers or producer marketing. No marketing order or amendment thereto directly affecting producers or producer marketing shall be issued unless the director determines (in accordance with any of the procedures described at RCW 15.65.160) that the issuance of such order or amendment is assented to or favored by producers within the affected area who during a representative period determined by the director constituted either (1) at least sixty-five percent by numbers and at least fifty-one percent by volume of production of the producers who have been engaged within the area of production specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for marketing in the marketing area specified in such marketing order, or (2) at least fifty-one percent by numbers and at least sixty-five percent by volume of production of such producers: PROVIDED, That producers shall be deemed to have assented to or approved a proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent or approve the proposed order in a referendum. [1985 c 261 § 4; 1975 1st ex.s. c 7 § 3; 1961 c 256 § 14.]

15.65.150 Minimum requirements prerequisite to order or amendment assessing handlers—Assent by producers. Any marketing order or amendment thereto directly assessing handlers shall be issued either (1) when the director determines that the issuance of such order or amendment is assented to or favored by handlers who during a representative period determined by the director constituted at least fifty-one percent by numbers or fifty-one percent by volume handled of the handlers who have been engaged in the handling of the commodity specified in such marketing order produced in such production area or marketed in such marketing area, as the case may be, or (2) when upon the basis of findings on a duly noticed hearing held in the manner herein provided, the director determines:

(a) That the issuance of such order or amendment will not result in unequal cost of product or availability of supplies, or cause competitive disadvantage of other respects as between handlers;

(b) That the issuance of such order or amendment is the only practical means of advancing the interest of producers

of such commodity pursuant to the declared policy of this chapter and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this chapter;

(c) That the issuance of such order is assented to or favored by producers who during a representative period determined by the director constituted at least seventy-five percent by numbers or at least sixty-five percent by volume of production of the producers who have been engaged within the production area specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for sale in the marketing area specified in such order. [1985 c 261 § 5; 1961 c 256 § 15.]

15.65.160 Ascertainment of required assent percentages. After publication of his final decision, the director shall ascertain (either by written agreement in accordance with subdivision (1) of this section or by referendum in accordance with subdivision (2) of this section) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers within the affected area and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) as now or hereafter amended: PROVIDED, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected commodity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: PROVIDED FURTHER, That a marketing order shall not become effective when the provisions of subdivision (3) of this section are used unless sixty-five percent by number of the affected producers within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of such affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: PROVIDED, That the association shall first determine that a majority of its affected producers authorizes its action concerning the specific marketing order. [1985 c 261 § 6; 1975 1st ex.s. c 7 § 4; 1961 c 256 § 16.]

15.65.170 Issuance of order or amendment—Publication—Force and effect. If the director determines that the requisite assent has been given he shall issue and put any order or amendment thereto into force, whereupon each and every provision thereof shall have the force of law. Issuance shall be accomplished by publication of a notice for one day in a newspaper of general circulation in the affected area. The notice shall state that the order has been issued and put into force and where copies of such order may be obtained. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect. [1987 c 393 § 6; 1961 c 256 § 17.]

15.65.180 Amendment, suspension of agreement or order upon advice of commodity board—Certain prerequisites waived. The director may, upon the advice of the commodity board serving under any agreement or order and without compliance with the provisions of RCW 15.65.050 through 15.65.170:

(1) Amend any marketing agreement or order as to any minor matter or wording which does not substantially alter the provisions and intention of such agreement or order;

(2) Suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if he finds that such suspension will tend to effectuate the declared policy of this chapter: PROVIDED, That any such suspension of all or substantially all of such agreement or order shall not become effective until the end of the then current marketing season. [1961 c 256 § 18.]

15.65.190 Termination of agreement or order on assent of producers—Procedure. Any marketing agreement or order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers within the affected area favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him for such termination. No such termination shall become effective until the expiration of the marketing season then current. [1985 c 261 § 7; 1961 c 256 § 19.]

15.65.200 Lists of producers, handlers, commodities—Correction—Purpose and use. Whenever application is made for the issuance of a marketing agreement or order or the director otherwise determines to hold a hearing for the purpose of such issuance, the director or his designee shall

cause lists to be prepared from any information which he has at hand or which he may obtain from producers, associations of producers and handlers of the affected commodity. Such lists shall contain the names and addresses of persons who produce the affected commodity within the affected area, the amount of such commodity produced by each such person during the period which the director determines for the purposes of the agreement or order to be representative, and the name of any cooperative association authorized to market for him within the affected area the commodity specified in the marketing agreement or order. Such lists shall also contain the names and addresses of persons who handle the affected commodity within the affected area and the amount of such commodity handled by each person during the period which the director determines for the purposes of the agreement or order to be representative. Any qualified person may at any time have his name placed upon any list for which he qualifies by delivering or mailing his name, address and other information to the director and in such case the director shall verify such person's qualifications and if he qualifies, place his name upon such list. At every hearing upon the issuance, amendment or termination of such order or agreement the director or his designee shall take evidence for the purpose of making such lists complete and accurate and he may employ his powers of subpoena of witnesses and of books, records and documents for such purpose. After every such hearing the director shall compile, complete, correct and bring lists up to date in accordance with the evidence and information obtained at such hearing. For all purposes of giving notice, holding referenda and electing members of commodity boards, the lists on hand corrected up to the day next preceding the date for issuing notices or ballots as the case may be shall, for all purposes of this chapter, be deemed to be the list of all persons entitled to notice or to assent or dissent or to vote. [1985 c 261 § 8; 1961 c 256 § 20.]

15.65.210 Powers and duties of director with respect to the administration and enforcement of agreements and orders—Administrator—Personnel. The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he shall include in each order and he may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he determines are necessary and proper for such order or agreement to effectuate the declared policies of this chapter. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, including the authority to borrow money and incur indebtedness, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor. [1977 ex.s. c 26 § 4; 1961 c 256 § 21.]

15.65.220 Commodity boards—Membership—Agreement or order to establish and control. Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to qualification, nomination, election, term of office, powers, duties and all other matters pertaining to such board. The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the agreement or order, but in any marketing order the number of handlers on the board shall not exceed the number of producers thereon. The director shall appoint to every such board one person who is neither a producer nor a handler to represent the department and the public generally. [1961 c 256 § 22.]

15.65.230 Qualifications of members of commodity boards. The producer members of each such board shall be practical producers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in producing such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom and who is not engaged in business, directly or indirectly, as a handler or other dealer. The handler members of such board shall be practical handlers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been, either individually or as an officer or employee of a corporation, firm, partnership, association or cooperative, actually engaged in handling such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom. The qualification of members of the board as herein set forth must continue during their terms of office. [1961 c 256 § 23.]

15.65.235 Producer-handlers as producers for qualification purposes—Exception. Whenever any commodity board is formed under the provisions of this chapter and it only affects producers and producer-handlers, then such producer-handlers shall be considered to be acting only as producers for purpose of election and membership on a commodity board: PROVIDED, That this section shall not apply to a commodity board which only affects producers and producer-handlers of essential oils. [1971 c 25 § 1.]

15.65.240 Terms of members of commodity boards—Elections. The term of office of board members shall be three years, and one-third as nearly as may be shall be elected every year: PROVIDED, That at the inception of any agreement or order the entire board shall be elected one-third for a term of one year, one-third for a term of two years and one-third for a term of three years to the end that memberships on such board shall be on a rotating basis. In the event an order or agreement provides that both producers and handlers shall be members of such board the terms of each type of member shall be so arranged that one-third of the handler members as nearly as may be and one-third of the producer members as nearly as may be shall be elected each year.

Any marketing agreement or order may provide for election of board members by districts, in which case district lines and the number of board members to be elected from each district shall be specified in such agreement or order and upon such basis as the director finds to be fair and equitable and reasonably adapted to effectuate the declared policies of this chapter. [1961 c 256 § 24.]

15.65.250 Nominations for election to commodity board. For the purpose of nominating candidates to be voted upon for election to such board memberships, the director shall call separate meetings of the affected producers and handlers within the affected area and in case elections shall be by districts he shall call separate meetings for each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers and/or handlers according to the list thereof maintained by the director pursuant to RCW 15.65.200. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. The notice shall call for nominations in accordance with the marketing order and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

When only one nominee is nominated for any position on the board the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected. [1987 c 393 § 7; 1985 c 261 § 9; 1975 1st ex.s. c 7 § 5; 1961 c 256 § 25.]

15.65.260 Election of members of commodity board—Procedure. The members of every such board shall be elected by secret mail ballot under the supervision of the director. Producer members of such board shall be elected by a majority of the votes cast by the affected producers within the affected area, but if the marketing order or agreement provides for districts such producer members of the board shall be elected by a majority of the votes cast by the affected producers in the respective districts. Each affected producer within the affected area shall be entitled to one vote. Handler members of the board shall be elected by a majority of the votes cast by the affected handlers within the affected area, but if the marketing order or agreement provides for districts such handler members of the board shall be elected by a majority of the votes cast by the affected handlers in the respective districts. Each affected handler within the affected area shall be entitled to one vote.

If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each producer and handler entitled to vote whose name appears upon the list thereof compiled and maintained by the director in accordance with RCW 15.65.200. Any other producer or handler entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of any board member. [1985 c 261 § 10; 1961 c 256 § 26.]

15.65.270 Vacancies, quorum, compensation, travel expenses of commodity board members. In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term. A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board. Each member of the board shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 16; 1975-'76 2nd ex.s. c 34 § 19; 1961 c 256 § 27.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.65.280 Powers and duties of commodity board—Reservation of power to director. The powers and duties of the board shall be:

(1) To elect a chairman and such other officers as it deems advisable;

(2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules, regulations and orders and amendments thereto for the exercise of his powers in connection with such agreement or order;

(4) To advise the director upon any and all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter. [1985 c 261 § 11; 1961 c 256 § 28.]

15.65.283 Members may belong to association with same objectives—Contracts with other associations authorized. Any member of an agricultural commodity board may also be a member or officer of an association which has the same objectives for which the agricultural commodity board was formed. An agricultural commodity board may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 1.]

15.65.285 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commodity boards. The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for any commodity board. [1972 ex.s. c 112 § 2.]

15.65.290 Claims and liabilities, enforcement against organization—Personal liabilities of officials, employees, etc. Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this chapter or any marketing agreement or order issued pursuant to this chapter, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee or agent incurred in their official capacity under the agreement or order shall exist either against its administrator, board, officers, employees and/or agents in his or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent thereof) established pursuant to this chapter or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member. [1961 c 256 § 29.]

15.65.300 Agreement or order to contain detailed statement of powers and purposes. The purposes for which each marketing agreement and order is issued and the powers which shall be exercised thereunder shall be stated in detail in the provisions of such agreement or order. Any such agreement or order or amendment thereto may contain provisions for the exercise of any one or more or all of the powers and purposes set forth in RCW 15.65.310 through 15.65.340. However, any agreement, order or amendment wherein the affected commodity is one of those listed below shall contain provisions for the exercise of only those powers and purposes contained in said RCW 15.65.310 through 15.65.340 set after its name below, to wit:

(1) Wheat, RCW 15.65.310, 15.65.320 and 15.65.330. [1961 c 256 § 30.]

15.65.310 Advertising, sale, trade barrier, claim, etc., provisions in agreement or order. Any marketing agreement or order may provide for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for the affected commodity. It may also provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market. Each such order or agreement and all programs thereunder shall be directed toward increasing the sale of such commodity without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of such commodity nor disparage the quality, value, sale or use of any other agricultural commodity. [1961 c 256 § 31.]

15.65.320 Agreement and order provisions for research. Any marketing agreement or order may provide for research in the production, processing and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his designee said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his designee. [1961 c 256 § 32.]

15.65.330 Agreement and order provisions for uniform grades and standards—Enforcement—Rules. Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his designee to provide by rules and regulations for, any one or more, or all, of the following: (1) Establishing uniform grades and standards of quality, condition, maturity, size,

weight, pack, packages and/or label for the affected commodity or any products thereof; (2) requiring producers, handlers and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of the affected commodity and/or in offering, advertising and/or delivering it therefor; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his designee shall carry out inspection and enforcement of, and may (within the general provisions of the agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: PROVIDED, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this chapter. [1961 c 256 § 33.]

15.65.340 Agreement and order provisions prohibiting or regulating certain practices. Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his customer or his supplier or of otherwise dealing or trading with him or of diverting trade from a competitor, to wit:

(1) Paying rebates, commissions or unearned discounts;

(2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of mark-up for the seller) any of the affected commodities or of any other commodity or product thereof;

(3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier or other person;

(4) Discriminating between customers, or suppliers of like class;

(5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-on or other purposes such commodity or product is sold below its fair value;

(6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices. [1961 c 256 § 34.]

15.65.350 Agreement and order to define applicable area—"Production area"—"Marketing area." Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the state. Such area may be defined as a "production area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is produced within such production area and sold, marketed or delivered for sale or marketing. Such area may be defined as a "marketing area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing or distribution or processing or consumption within such marketing area. [1985 c 261 § 12; 1961 c 256 § 35.]

15.65.360 Agreement and order provisions for marketing information, services, verification of grades, standards, sampling, etc. Any marketing agreement or order may provide for marketing information and services to producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of the agricultural product purchased by handlers from producers. [1961 c 256 § 36.]

15.65.370 Agreement or order not to prohibit or discriminatorily burden marketing. No marketing agreement or order or amendment thereto shall prohibit or discriminatorily burden the marketing in its area of any agricultural commodity or product thereof produced in any production area of the United States. [1961 c 256 § 37.]

15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by *RCW 15.58.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity board funds for this purpose. [1988 c 54 § 1.]

***Reviser's note:** Due to the 1989 c 380 § 1 amendment to RCW 15.58.030, "pesticide" is now defined in subsection (29) of that section.

15.65.380 Additional agreement or order provisions—Rules of technical or administrative nature authorized. Any marketing agreement or order may contain any other, further and different provisions which are incidental to and not inconsistent with this chapter and which the

director finds to be needed and reasonably adapted to effectuate the declared policies of this chapter. Such provisions shall set forth the detailed application of this chapter to the affected agricultural commodity. The director or his designee shall have the power to make rules and regulations of a technical or administrative nature under this chapter and/or under any agreement or order issued pursuant to this chapter. [1961 c 256 § 38.]

15.65.390 Annual assessment—Limitation generally. There is hereby levied, and the director or his designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such affected unit stored in frozen condition or sold or marketed or delivered for sale or marketed by him, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution, or stored in frozen condition, by him: PROVIDED, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. [1987 c 393 § 9; 1985 c 261 § 13; 1961 c 256 § 39.]

15.65.400 Rate of assessment. In every marketing agreement and order the director shall prescribe the rate of such assessment. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate. [1987 c 393 § 10; 1961 c 256 § 40.]

15.65.410 Time, place, method for payment and collection of assessments. The director shall prescribe in each marketing order and agreement the time, place and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such purpose the director may, by the terms of the marketing order or agreement:

(1) Require stamps to be purchased from him or his designee and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid by the producer or first handler and the receipt issued. [1985 c 261 § 14; 1961 c 256 § 41.]

15.65.420 Use of moneys collected—Departmental expenses. Moneys collected by the director or his designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his designee only for the purpose of paying for expenses and costs arising in connection with the formulation, issuance, administration and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this chapter with respect to such marketing order or agreement. [1961 c 256 § 42.]

15.65.430 Refunds of moneys received or collected. Any moneys collected or received by the director or his designee pursuant to the provisions of any marketing agreement or order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the director determines to be reasonably adapted to effectuate the declared policies of this chapter and the purposes of such marketing agreement or order, to all persons from whom

such moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the director or his designee finds that the same will tend to effectuate such policies and purposes. Upon the termination of any marketing agreement or order, any and all moneys remaining, and not required to defray the expenses or repay the obligations incurred and undertaken pursuant to such agreement or order, shall be returned by the director upon a pro rata basis to all persons from whom such moneys were collected or received. However, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the director may use such moneys to defray expenses incurred by him in the formulation, issuance, administration or enforcement of any subsequent marketing agreement or order for such commodity. Thereafter, if there are any such moneys remaining which have not been used by the director as hereinabove provided, the same shall be withdrawn from the approved depository and paid into the state treasury as unclaimed trust moneys. [1961 c 256 § 43.]

15.65.440 Assessments personal debt—Additional percentage if not paid—Civil action to collect. Any due and payable assessment herein levied in such specified amount as may be determined by the director or his designee pursuant to the provisions of this chapter and such agreement or order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the director or his designee when payment is called for by him. In the event any person fails to pay the director or his designee the full amount of such assessment or such other sum on or before the date due, the director or his designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the director or his designee may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1985 c 261 § 15; 1961 c 256 § 44.]

15.65.450 Deposit to defray expenses of preparing and effectuating agreement or order—Reimbursement. Prior to the issuance of any marketing agreement or order, the director may require the applicants therefor to deposit with him such amount of money as the director may deem necessary to defray the expenses of preparing and making effective such agreement or order. The director or his designee may reimburse the applicant from any moneys received by him under such agreement or order for any moneys so deposited by such applicant and/or for any necessary expenses incurred by such applicant in preparing and obtaining approval of such marketing agreement or order upon receipt of a verified statement of such expense approved by the director or his designee. [1961 c 256 § 45.]

15.65.460 Marketing act revolving fund—Composition. There shall be a fund known as the "marketing act revolving fund" which shall consist of all assessments, fees, penalties, forfeitures and all other moneys, income or revenue received or collected pursuant to the provisions of this chapter and of all marketing orders and agreements issued pursuant to this chapter. None of the provisions of RCW 43.01.050 shall be applicable to such fund nor to any of the moneys so received or collected. [1961 c 256 § 46.]

15.65.470 Depositaries for revolving fund—Deposits. The director or his or her designee shall designate financial institutions which are qualified public depositaries under chapter 39.58 RCW as depositary or depositaries of money received for the marketing act revolving fund. All moneys received by the director or his or her designee or by any administrator, board or employee, except an amount of petty cash for each day's needs as fixed by the regulations, shall be deposited each day in a designated depositary. [1987 c 393 § 8; 1961 c 256 § 47.]

15.65.480 Separate accounts for each agreement or order—Disbursements. The director and each of his designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this chapter in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this chapter and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing act revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his designee. [1961 c 256 § 48.]

15.65.490 Records of financial transactions to be kept by director—Audits. The director and each of his designees shall keep or cause to be kept separately for each agreement and order in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to such order or agreement, and the same shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington or of a fiscal year determined by the director. A copy of every such audit

shall be delivered within thirty days after the completion thereof to the governor and the commodity board of the agreement or order concerned. [1982 c 81 § 1; 1979 c 154 § 5; 1973 c 106 § 10; 1961 c 256 § 49.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.65.500 Bonds of administrator, board, employee. The director or his designee shall require that a bond be given by every administrator, administrative board and/or employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: PROVIDED, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington. [1961 c 256 § 50.]

15.65.510 Information and inspections required—Hearings—Confidentiality and disclosures. All parties to a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director, the director's designee, or the commodity board established under the marketing agreement or order, furnish such information and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to effectuate the declared policies of this chapter and the purposes of such agreement or order. Information and inspections may also be required by the director, the director's designee, or the commodity board to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director, the director's designee, or the commodity board. The director, the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or, any person subject to any marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or the director's designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or the director's designee pursuant to this section shall be kept confidential by all officers and employees of the director or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by the director or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which the director or the director's designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person; or

(2) The publication by the director or the director's designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person. [1989 c 354 § 29; 1961 c 256 § 51.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.65.520 Criminal acts and penalties. It shall be a misdemeanor:

(1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement or record required by the director pursuant to the provisions of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter or to wilfully fail or refuse to furnish or render any such report, statement or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his designee or his duly authorized agents, upon request, information concerning the name and address of the person from whom he has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this chapter and the grade, standard, quality or quantity of and the price paid for such commodity so received.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: PROVIDED, That if the court finds that a petition pursuant to RCW 15.65.570 was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under clause (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with RCW 15.65.570 and regulations prescribed pursuant thereto. [1961 c 256 § 52.]

15.65.530 Civil liability—Use of moneys recovered. Any person who violates any provisions of this chapter or any marketing agreement or order duly issued and in effect pursuant to this chapter or who violates any rule or regulation issued by the director and/or his designee pursuant to the provisions of this chapter or of any marketing agreement or order duly issued by the director and in effect pursuant to this chapter, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this paragraph shall be allocated to and used for the purposes of the agreement or order concerned. [1961 c 256 § 53.]

15.65.540 Jurisdiction of superior courts—Who may bring action. The several superior courts of the state of Washington are hereby vested with jurisdiction:

(1) Specifically to enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter and each and every term, condition and provision thereof;

(2) To prevent, restrain and enjoin pending litigation and thereafter permanently any person from violating this chapter or the provisions of any such agreement or order and each and every term, condition and provision thereof, regardless of the existence of any other remedy at law.

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this chapter an each and every duty imposed upon him by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this chapter upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by this chapter or by any marketing agreement or order issued pursuant to this chapter and said courts shall have jurisdiction of such cause and shall grant such relief upon proof of such violation or threatened violation or refusal. [1961 c 256 § 54.]

15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director. Upon the request of the director or his designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings. [1961 c 256 § 55.]

15.65.560 Remedies additional. The remedies provided for in this chapter shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this chapter or now or hereafter existing at law or in equity, and such remedies shall be concurrent and alternative and neither singly nor combined shall the same be exclusive. [1961 c 256 § 56.]

15.65.570 Proceedings subject to administrative procedure act. All proceedings held by the director for the promulgation of any marketing agreement or order and the amendment, modification, or dissolution thereof and all proceedings concerning the promulgation of any rules or regulations or the amendment or modification thereof and appeals therefrom shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended. [1961 c 256 § 57.]

15.65.580 Director may issue agreement or order similar to license or order issued by United States—Administrator, board. In the event the director finds that it tends to effectuate the declared purposes of this chapter within the standards prescribed in this chapter, the director may issue a marketing agreement or order, applicable to the marketing, within the state of Washington of any agricultural commodity, containing like terms, provisions, methods and procedures as any license or order regulating the marketing of such commodity in interstate or foreign commerce, issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting an administrator or the members of any board or other agency under such marketing order, the director may utilize the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel: PROVIDED, That any administrator, board or agency so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing agreement or order issued by the director hereunder. [1961 c 256 § 58.]

15.65.590 Cooperation, joint agreements or orders with other states and United States to achieve uniformity. The director and his designee are hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agreements or orders, for the purposes and within the standards set forth in this chapter, and may exercise any administrative authority prescribed by this chapter to effect such uniformity of administration and regulation. [1961 c 256 § 59.]

15.65.600 Public interest to be protected—Establishment of prices prohibited. The director shall

protect the public interest and the interest of all consumers and producers of every agricultural commodity regulated by every marketing agreement and order issued pursuant to this chapter and shall neither take nor authorize any action which shall have for its purpose the establishment or maintenance of prices. [1961 c 256 § 60.]

15.65.610 Orders, rules of Washington utilities and transportation commission and interstate commerce commission not affected. Nothing in this chapter contained shall apply to any order, rule or regulation issued or issuable by the Washington utilities and transportation commission or the interstate commerce commission with respect to the operation of common carriers. [1961 c 256 § 61.]

15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter. Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple advertising commission (RCW 15.24.010-15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive), or to dairy products commission (RCW 15.44.010-15.44.180 inclusive), or to wheat commission (RCW 15.63.010-15.63.920 inclusive). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66 RCW); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter. [1961 c 256 § 62.]

15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables. Except for the provisions of this chapter relating to levying, collecting, and paying assessments, nothing in this chapter shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. [1985 c 261 § 16; 1961 c 256 § 63.]

15.65.640 Chapter not to apply to green pea grower or processor. Nothing in this chapter shall apply to any person engaged in growing of or processing green peas. [1961 c 256 § 64.]

15.65.900 Savings—1961 c 256. This chapter shall not repeal, amend or modify chapter 15.66 RCW, or any other law providing for the marketing of agricultural commodities and/or providing for marketing agreements or orders for such agricultural commodities, which shall be in existence on the date this act becomes effective. [1961 c 256 § 65.]

Reviser's note: The effective date of this act was midnight June 7, 1961, see preface 1961 session laws.

15.65.910 Severability—1961 c 256. If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional. [1961 c 256 § 66.]

Chapter 15.66

WASHINGTON AGRICULTURAL ENABLING ACT OF 1955—COMMODITY COMMISSIONS

Sections

Agricultural processing and marketing associations: Chapter 24.34 RCW.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.

15.66.010 Definitions. For the purposes of this chapter:

(1) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him concerning some matter under this chapter.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Agricultural commodity" means any animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. For the purposes of RCW 15.66.060, 15.66.090, and 15.66.120, as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Affected producer" means any producer of an affected commodity.

(7) "Affected commodity" means any agricultural commodity for which the director has established a list of producers pursuant to RCW 15.66.060.

(8) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(9) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(10) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(11) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(12) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(13) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product. [1986 c 203 § 16; 1985 c 457 § 14; 1983 c 288 § 6; 1982 c 35 § 180; 1975 1st ex.s. c 7 § 6; 1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

Severability—1986 c 203: See note following RCW 15.04.100.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

15.66.020 Declaration of purpose. The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of this chapter to promote the general welfare of the state by enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient and unhampered marketing, grading and standardizing of the commodities they produce, and in promoting and increasing the sale of such commodities. [1961 c 11 § 15.66.020. Prior: 1955 c 191 § 2.]

15.66.025 Regulatory authority on the production of rapeseed by variety and location. For the purpose of rapeseed production in the state of Washington, the director of the department of agriculture shall have the regulatory authority on the production of rapeseed by variety and geographical location until such time as a rapeseed commodity commission is formulated. Once formed, the rapeseed commodity commission shall assume the regulatory authority on the production of rapeseed by variety and geographic location in the state of Washington. [1986 c 203 § 22.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.66.030 Marketing orders authorized. Marketing orders may be made for any one or more of the following purposes:

(1) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets or to create new or larger markets for any agricultural commodity grown in the state of Washington;

(2) To provide for carrying on research studies to find more efficient methods of production, processing, handling and marketing of any agricultural commodity;

(3) To provide for improving standards and grades by defining, establishing and providing labeling requirements with respect to the same;

(4) To investigate and take necessary action to prevent unfair trade practices. [1961 c 11 § 15.66.030. Prior: 1955 c 191 § 3.]

15.66.040 Prerequisites to marketing orders—Director's duties. Marketing orders and orders modifying or terminating existing marketing orders shall be promulgated by the director only after the director has done the following:

(1) Received a petition as provided for in RCW 15.66.050;

(2) Given notice of hearing as provided for in RCW 15.66.060;

(3) Conducted a hearing as provided for in RCW 15.66.070;

(4) Made findings and decision as provided for in RCW 15.66.080;

(5) Determined assent of affected producers as provided for in RCW 15.66.090. [1961 c 11 § 15.66.040. Prior: 1955 c 191 § 4.]

15.66.050 Petition for marketing order—Fee. Petitions for issuance, amendment or termination of a marketing order shall be signed by not less than five percent or one hundred of the producers alleged to be affected, whichever is less, and shall be filed with the director. Such petition shall be accompanied by a filing fee of one hundred dollars payable to the state treasurer; and shall designate some person as attorney-in-fact for the purpose of this section. Upon receipt of such a petition, the director shall prepare a budget estimate for handling such petition which shall include the cost of the preparation of the estimate, the cost of the hearings and the cost of the proposed referendum. The petitioners, within thirty days after receipt of the budget estimate by their attorney-in-fact shall remit to the director the difference between the filing fee of one hundred dollars already paid and the total budget estimate. If the petitioners fail to remit the difference, or if for any other reason the proceedings for the issuance, amendment or termination of the marketing order are discontinued, the filing fee, including any additional amount paid in accordance with such budget estimates shall not be refunded. If the petition results, after proper proceedings, in the issuance, amendment, or termination of a marketing order, said petitioners shall be reimbursed for the amount paid for said total filing fee out of funds of the commodity commission as they become available. [1961 c 11 § 15.66.050. Prior: 1955 c 191 § 5.]

15.66.060 Lists of affected producers—Notice—Hearing notice. Upon receipt of a petition for the issuance, amendment, or termination of a marketing order, the director shall establish a list of producers of the agricultural commodity affected or make any such existing list current. In establishing or making current such a list of producers and their individual production, the director shall publish a notice to producers of the commodity to be affected requiring them to file with the director a report showing the producer's name, mailing address, and the yearly average quantity of the affected commodity produced by him in the three years preceding the date of the notice or in such lesser time as the producer has produced the commodity in question. Such information as to production may also be accepted from other valid sources if readily available. The notice shall be published once a week for four consecutive weeks in such newspaper or newspapers, including a newspaper or newspapers of general circulation within the affected areas, as the director may prescribe, and shall be mailed to all affected producers on record with the director. All reports shall be filed with the director within twenty days from the last date of publication of the notice or within thirty days after the mailing of the notice to affected producers, whichever is the later. The director shall keep such lists at all times as current as possible and may require information from affected producers at various times in accordance with rules and regulations prescribed by the director: PROVIDED, That any commission established under the provisions of this chapter may at its discretion prior to any election for any purpose by such commission carry out the above stated mandate to the director for establishing a list of producers and their individual production, and supply the director with a current list of all producers subject to the provisions of the marketing order under which it was formed.

Such producer list shall be final and conclusive in making determinations relative to the assent by producers upon the issuance, amendment or termination of a marketing order and in elections under the provisions of this chapter.

The director shall then notify affected producers, so listed, by mail that the public hearing affording opportunity for them to be heard upon the proposed issuance, amendment, or termination of the marketing order will be heard at the time and place stated in the notice. Such notice of the hearing shall be given not less than ten days nor more than sixty days prior to the hearing. [1975 1st ex.s. c 7 § 7; 1969 c 66 § 1; 1961 c 11 § 15.66.060. Prior: 1955 c 191 § 6.]

15.66.070 Public hearing. At the public hearing the director shall receive evidence and testimony offered in support of, or opposition to, the proposed issuance of, amendment to, or termination of a marketing order and concerning the terms, conditions, scope, and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearings shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base his findings upon the testimony and evidence received at the hearing, together with any other relevant facts available to him from official publications of institutions of recognized standing. The director shall describe in his findings such official publications upon which any finding is based.

For such hearings and for any other hearings under this chapter, the director shall have the power to subpoena witnesses and to issue subpoenas for the production of any books, records or documents of any kind.

The superior court of the county in which any hearing or proceeding may be had may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. The director, in case of the refusal of any witness to attest or testify or produce any papers required by the subpoena, shall report to the superior court of the county in which the proceeding is pending by petition setting forth that

due notice has been given of the time and place of attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that he has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the subpoena, or has refused to answer questions propounded to him in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel a witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued, it shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court. [1961 c 11 § 15.66.070. Prior: 1955 c 191 § 7.]

15.66.080 Findings and decision of the director. The director shall make and publish findings upon every material point controverted at the hearing and required by this chapter and upon such other matters and things as he may deem fitting and proper. He shall also issue a recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. The recommended decision shall contain the text in full of any order, or amendment or termination of existing order, and may deny or approve the proposal in its entirety, or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment, or termination of any marketing order unless he shall find with respect thereto:

(1) That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objective sought in such marketing order;

(2) That the proposed issuance, amendment, or termination is in conformity with the provisions of this chapter and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this chapter;

(3) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent necessary to attain such objectives.

After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections with the director. The director shall consider the objections and shall issue his final decision which may be the same as the recommended decision or may be revised in the light of said objections. The final decision shall set out in full the text of the order. The director shall deliver or mail copies of the final decision to the same parties to whom copies of the findings and recommended decision are required to be sent. If the final decision denies the proposal in its entirety, no further action shall be taken by the director. [1961 c 11 § 15.66.080. Prior: 1955 c 191 § 8.]

15.66.090 Determined assent of affected producers. After the issuance by the director of the final decision approving the issuance, amendment, or termination of a marketing order, the director shall determine by a referendum whether the affected producers assent to the proposed action or not. The director shall conduct the referendum among the affected producers based on the list as provided for in RCW 15.66.060, and the affected producers shall be deemed to have assented to the proposed issuance or termination order if fifty-one percent or more by number reply to the referendum within the time specified by the director, and if, of those replying, sixty-five percent or more by number and fifty-one percent or more by volume assent to the proposed order. The producers shall be deemed to have assented to the proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent to the proposed order. The determination by volume shall be made on the basis of volume as determined in the list of affected producers created under provisions of RCW 15.66.060, subject to rules and regulations of the director for such determination. The director shall consider the approval or disapproval of any cooperative marketing association authorized by its producer members to act for them in any such referendum, as being the approval or disapproval of the producers who are members of or stockholders in or under contract with such association of cooperative producers: PROVIDED, That the association shall first determine that a majority of the membership of the association authorize its action concerning the specific marketing order. If the requisite assent is given, the director shall promulgate the order and shall mail notices of the same to all affected producers. [1975 1st ex.s. c 7 § 8; 1961 c 11 § 15.66.090. Prior: 1955 c 191 § 9.]

15.66.100 Contents of marketing order. A marketing order shall define the area of the state to be covered by the order which may be all or any portion of the state; shall contain provisions for establishment of a commodity commission and administration and operation and powers and duties of same; shall provide for assessments as provided for in this chapter and shall contain one or more of the provisions as set forth in RCW 15.66.030. The order may provide that its provisions covering standards, grades, labels and trade practices apply with respect to the affected commodity marketed or sold within such area regardless of where produced. A marketing order may provide that one commodity commission may administer marketing orders for two or more affected commodities, if approved by a majority, as provided in this chapter for the creation of a marketing order, of the affected producers of each affected commodity concerned. [1961 c 11 § 15.66.100. Prior: 1955 c 191 § 10.]

15.66.110 Commodity commission—Composition—Terms. Every marketing order shall establish a commodity commission composed of not less than five nor more than thirteen members. In addition, the director shall be an ex officio member of each commodity commission. Commission members shall be citizens and residents of this state, over the age of twenty-five years. The term of office of commission members shall be three years with the terms rotating so than one-third of the terms will commence as nearly as practicable each year. However, the first commission shall be selected, one-third for a term of one year, one-third for a term of two years, and one-third for a term of three years, as nearly as practicable. Two-thirds of the commission members shall be elected by the affected producers and such elected members shall all be affected producers. The remaining one-third shall be appointed by the commission and shall be either affected producers, others active in matters relating to the affected commodity or persons not so related. [1961 c 11 § 15.66.110. Prior: 1955 c 191 § 11.]

15.66.120 Commodity commission—Nominations—Elections—Vacancies. Not less than ninety days nor more than one hundred and five days prior to the beginning of each term of each elected commission member, the director shall give notice by mail to all affected producers of the vacancy and call for nominations in accordance with this section and with the provisions of the marketing order and shall give notice of the final date for filing nominations, which shall not be less than eighty days nor more than eighty-five days before the beginning of such term. Such notice shall also advise that nominating petitions shall be signed by five persons qualified to vote for such candidates or, if the number of nominating signers is provided for in the marketing order, such number as such order provides.

Not less than sixty days nor more than seventy-five days prior to the commencement of such commission member term, the director shall submit by mail ballots to all affected producers, which ballots shall be required to be returned to the director not less than thirty days prior to the commencement of such term. Such mail ballot shall be conducted in a manner so that it shall be a secret ballot. With respect to the first commission for a particular commodity, the director may call for nominations in the notice of his decision following the hearing and the ballot may be submitted at the time the director's proposed order is submitted to the affected producers for their assent.

Said elected members may be elected from various districts within the area covered by the marketing order if the order so provides, with the number of members from each district to be in accordance with the provisions of the marketing order.

The members of the commission not elected by the affected producers shall be elected by a majority of the commission at a meeting of the commission within ninety days prior to expiration of the term but to fill nonelective vacancies caused by other reasons than the expiration of a term, the new member shall be elected by the commission at its first meeting after the occurrence of the vacancy.

When only one nominee is nominated for any position on the commission, the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected. [1975 1st ex.s. c 7 § 9; 1961 c 11 § 15.66.120. Prior: 1955 c 191 § 12.]

15.66.130 Commodity commission—Meetings—Quorum—Compensation. Each commodity commission shall hold such regular meetings as the marketing order may prescribe or that the commission by resolution may prescribe, together with such special meetings that may be called in accordance with provisions of its resolutions upon reasonable notice to all members thereof. A majority of the members shall constitute a quorum for the transaction of all business of the commission. In the event of a vacancy in an elected or appointed position on the commission, the remaining elected members of the commission shall select a qualified person to fill the unexpired term.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 17; 1975-'76 2nd ex.s. c 34 § 20; 1975 1st ex.s. c 7 § 10; 1972 ex.s. c 112 § 3; 1961 c 11 § 15.66.130. Prior: 1955 c 191 § 13.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.66.140 Commodity commission—Powers and duties. Every marketing commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chairman and such other officers as determined advisable;

(2) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) Such other powers and duties that are necessary to carry out the purposes of this chapter. [1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

15.66.145 Members may belong to association with same objectives—Contracts with associations authorized. Any member of an agricultural commission may also be a member or officer of an association which has the same objectives for which the agricultural commission was formed. An agricultural commission may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 4.]

15.66.150 Annual assessments—Rate—Collection. There is hereby levied, and there shall be collected by each commission, upon each and every unit of any agricultural commodity specified in any marketing order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold, processed, stored or delivered for sale, processing or storage by him. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the net unit price at the time of sale. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed three percent of the total market value of all affected units sold, processed, stored or delivered for sale, processing or storage by all affected producers of such units during the year to which the assessment applies.

Every marketing order shall prescribe the per unit or percentage rate of such assessment. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited and may be altered from time to time by amendment of such order. In every such marketing order and amendment the determination of such rate shall be based upon the volume and price of sales of affected units during a period which the director determines to be a representative period. The per unit or percentage rate of assessment prescribed in any such order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such order is amended as to such rate. However, at the end of any year, any affected producer may obtain a refund from the commission of any assessment payments made which exceed three percent of the total market value of all of the affected commodity sold, processed, stored or delivered for sale, processing or storage by such producer during the year. Such refund shall be made only upon satisfactory proof given by such producer in accordance with reasonable rules and regulations prescribed by the director. Such market value shall be based upon the average sales price received by such producer during the year from all his bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him during the year, such market value shall be determined by the director upon other sales of the affected commodity determined by the director to be representative and comparable.

To collect such assessment each order may require:

(1) Stamps to be purchased from the affected commodity commission or other authority stated in such order and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon).

(2) Payment of producer assessments before the affected units are shipped off the farm or payment of assessments at different or later times, and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(3) Every affected producer subject to assessment under such order to deposit with the commission in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed twenty-five percent of the estimated total annual assessment payable by such person. At the close of such marketing year the sums so deposited shall be adjusted to the total of such assessments payable by such person.

(4) Handlers receiving the affected commodity from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and remit the same to the affected commission. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. [1981 c 297 § 40; 1979 ex.s. c 93 § 1; 1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.66.160 Annual assessments—Disposition of revenue. Moneys collected by any commodity commission pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the commission only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order.

Upon the termination of any marketing order any and all moneys remaining with the commodity commission operating under that marketing order and not required to defray expenses or repay obligations incurred by that commission shall be returned to the affected producers in proportion to the assessments paid by each in the two year period preceding the date of the termination order. [1961 c 11 § 15.66.160. Prior: 1955 c 191 § 16.]

15.66.170 Annual assessments—Payments—Civil action to enforce. Any due and payable assessment herein levied, and every sum due under any marketing order in a specified amount shall constitute a personal debt of every

person so assessed or who otherwise owes the same, and the same shall be due and payable to the commission when payment is called for by the commission. In the event any person fails to pay the full amount of such assessment or such other sum on or before the date due, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1961 c 11 § 15.66.170. Prior: 1955 c 191 § 17.]

15.66.180 Expenditure of funds collected. All moneys which are collected or otherwise received pursuant to each marketing order created under this chapter shall be used solely by and for the commodity commission concerned and shall not be used for any other commission nor the department. Such moneys shall be deposited in a separate account or accounts in the name of the individual commission in any bank which is a state depositary. All expenses and disbursements incurred and made pursuant to the provisions of any marketing order shall be paid from moneys collected and received pursuant to such order without the necessity of a specific legislative appropriation and all moneys deposited for the account of any order shall be paid from said account by check or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the commission. None of the provisions of RCW 43.01.050 shall be applicable to any such account or any moneys so received, collected or expended. [1961 c 11 § 15.66.180. Prior: 1955 c 191 § 18.]

15.66.190 Official bonds required. Every administrator, employee or other person occupying a position of trust under any marketing order and every member actually handling or drawing upon funds shall give a bond in such penal amount as may be required by the affected commission or by the order, the premium for which bond or bonds shall be paid by the commission. [1961 c 11 § 15.66.190. Prior: 1955 c 191 § 19.]

15.66.200 Petition for modification or exemption—Hearing—Appeal from ruling. An affected producer subject to a marketing order may file a written petition with the director stating that the order, agreement or program or any part thereof is not in accordance with the law, and requesting a modification thereof or exemption therefrom. He shall thereupon be given a hearing, which hearing shall be conducted in the manner provided by RCW 15.66.070, and thereafter the director shall make his ruling which shall be final.

Appeal from any ruling of the director may be taken to the superior court of the county in which the petitioner resides or has his principal place of business, by serving upon the director a copy of the notice of appeal and complaint within twenty days from the date of entry of the ruling. Upon such application the court may proceed in accordance with RCW 7.16.010 through 7.16.140. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the director with directions to make such ruling as the court determines to be in accordance with law or to take such further proceedings as in its opinion are required by this chapter. [1961 c 11 § 15.66.200. Prior: 1955 c 191 § 20.]

15.66.210 Unlawful acts—Penalties—Injunctions—Investigations. It shall be a misdemeanor for:

(1) Any person wilfully to violate any provision of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter.

(2) Any person wilfully to render or furnish a false or fraudulent report, statement of record required by the director or any commission pursuant to the provisions of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter or wilfully to fail or refuse to furnish or render any such report, statement or record so required.

In the event of violation or threatened violation of any provision of this chapter or of any marketing order duly issued or entered into pursuant to this chapter, the director, the affected commission, or any affected producer on joining the affected commission, shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order and injunction pending litigation upon filing a verified complaint and sufficient bond.

All persons subject to any order shall severally from time to time, upon the request of the director, furnish him with such information as he finds to be necessary to enable him to effectuate the policies of this chapter and the purposes of such order or to ascertain and determine the extent to which such order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemptions from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director. For the purpose of ascertaining the correctness of any report made to the director pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director is authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents or memoranda as he deems relevant and which are within the control of any such person from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such person or such records, or of any subsidiary of any such person. To carry out the purposes of this section the director, upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind, and RCW 15.66.070 shall apply with respect to any such hearing, together with such other regulations consistent therewith as the director may from time to time prescribe. [1961 c 11 § 15.66.210. Prior: 1955 c 191 § 21.]

15.66.220 Compliance with chapter a defense in any action. In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this chapter or a marketing order issued under this chapter, and in furtherance of the purposes and provisions of this chapter, shall be a complete defense to such action or proceeding. [1961 c 11 § 15.66.220. Prior: 1955 c 191 § 22.]

15.66.230 Liability of commission, state, etc. Obligations incurred by any commission and any other liabilities or claims against the commission shall be enforced only against the assets of such commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to this chapter or the assets thereof or against any member officer, employee or agent of the board in his individual capacity. The members of any such commission, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of any such commission. The liability of the members of such commission shall be several and not joint and no member shall be liable for the default of any other member. [1961 c 11 § 15.66.230. Prior: 1955 c 191 § 23.]

15.66.240 Marketing agreements. Marketing agreements shall be created upon written application filed with the director by not less than five commercial producers of an agricultural commodity and upon approval of the director. The director shall hold a public hearing upon such application. Not less than five days prior thereto he shall give written notice thereof to all producers whom he determines may be proper parties to such agreement and shall publish such notice at least once in a newspaper of general circulation in the affected area. The director shall approve an agreement so applied for only if he shall find:

(1) That no other agreement or order is in force for the same commodity in the same area or any part thereof;

(2) That such agreement will tend to effectuate its purpose and the declared policies of this chapter and conforms to law;

(3) That enough persons who produce a sufficient amount of the affected commodity to tend to effectuate said policies and purposes and to provide sufficient moneys to defray the necessary expenses of formulation, issuance, administration and enforcement have agreed in writing to said agreement.

Such agreement may be for any of the purposes and may contain any of the provisions that a marketing order may contain under the provisions of this chapter but no other purposes and provisions. A commodity commission created by such agreement shall in all respects have all powers and duties as a commodity commission created by a marketing order. Such agreement shall be binding upon, and only upon, persons who have signed the agreement: PROVIDED, That a cooperative association may, in behalf of its members, execute any and all marketing agreements authorized hereunder, and upon so doing, such agreement so executed shall be binding upon said cooperative association and its members. Such agreements shall go into force when the director endorses his approval in writing upon the agreement and so notifies all who have signed the agreement. Additional signatories may be added at any time with the approval of the director. Every agreement shall remain in force and be binding upon all persons so agreeing for the period specified in such agreement but the agreement shall provide a time at least once in every twelve months when any or all such persons may withdraw upon giving notice as provided in the agreement. Such an agreement may be amended or terminated in the same manner as herein provided for its creation and may also be terminated whenever after the withdrawal of any signatory the director finds on the basis of evidence presented at such hearing that not enough persons remain signatory to such agreement to effectuate the purposes of the agreement or the policies of the act or to provide sufficient moneys to defray necessary expenses. However, in the event that a cooperative association is signatory to the marketing agreement in behalf of its members, the action of the cooperative association shall be considered the action of its members for the purpose of determining withdrawal or termination. [1961 c 11 § 15.66.240. Prior: 1955 c 191 § 24.]

15.66.245 Marketing agreement or order—Authority for participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity commission, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by *RCW 15.58.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity commission funds for this purpose. [1988 c 54 § 2.]

***Reviser's note:** Due to the 1989 c 380 § 1 amendment to RCW 15.58.030, "pesticide" is now defined in subsection (29) of that section.

15.66.250 Price fixing and product limiting prohibited. Nothing contained in this chapter shall permit fixing of prices not otherwise permitted by law or any limitation on production and no marketing order or agreement or any rule or regulation thereunder shall contain any such provisions. [1961 c 11 § 15.66.250. Prior: 1955 c 191 § 25.]

15.66.260 Administrative expenses. All general administrative expenses of the director in carrying out the provisions of this chapter shall be borne by the state: PROVIDED, That the department shall be reimbursed for actual costs incurred in conducting nominations and elections for members of any commodity board established under the provisions of this chapter. Such reimbursement shall be made from the funds of the commission for which the

nominations and elections were conducted by the director. [1969 c 66 § 2; 1961 c 11 § 15.66.260. Prior: 1955 c 191 § 26.]

15.66.270 Exemptions. Nothing in this chapter contained shall apply to:

(1) Any order, rule, or regulation issued or issuable by the Washington utilities and transportation commission or the interstate commerce commission with respect to the operation of common carriers;

(2) Any provision of the statutes of the state of Washington relating to the apple advertising commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW) or to the dairy products commission (chapter 15.44 RCW). No marketing agreement or order shall be issued with respect to apples, soft tree fruits or dairy products for the purposes specified in RCW 15.66.030(1) or 15.66.030(2). [1961 c 11 § 15.66.270. Prior: 1955 c 191 § 27.]

15.66.275 Applicability of chapter to state agencies or other governmental units. The provisions of this chapter and any marketing order established thereunder shall be applicable to any state agency or other governmental unit engaged in the production for sale of any agricultural commodity subject to such marketing order, especially those relating to RCW 15.66.150 concerning assessments. Such assessments shall be paid by the state agency or governmental agency made subject to the marketing order from the proceeds derived from the sale of said agricultural commodities. [1967 ex.s. c 55 § 1.]

15.66.280 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commissions. The restrictive provisions of chapter 43.78 RCW as now or hereafter amended shall not apply to promotional printing and literature for any commission formed under this chapter. [1972 ex.s. c 112 § 5.]

15.66.900 Short title. This chapter shall be known and may be cited as the "Washington Agricultural Enabling Act." [1961 c 11 § 15.66.900. Prior: 1955 c 191 § 29.]

Chapter 15.69
CONSERVATION—NORTHWEST WASHINGTON NURSERY

Sections

15.69.010 Agreements for soil conservation and land use authorized. The director of agriculture is hereby authorized to enter into agreements with local, state and federal agencies, agencies of other states and associations of agricultural producers, such as, but not limited to the crop improvement association, for the growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture on such property or properties known as the northwest Washington nursery located near Bellingham, Washington. Such agreements shall provide for payment of reasonable fees to cover the cost of such growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture. [1961 c 11 § 15.69.010. Prior: 1955 c 368 § 1.]

15.69.020 Northwest nursery fund. There is created a fund to be known as the northwest nursery fund into which shall be paid all moneys received as payment to cover the costs of production for growing and/or testing plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture in this state and such other money as shall be received from services rendered on such premises not otherwise provided for by law. None of the provisions of RCW 43.01.050 shall be applicable to the northwest nursery fund, nor to any of the moneys received and collected. [1961 c 11 § 15.69.020. Prior: 1955 c 368 § 2.]

15.69.030 Northwest nursery fund—Depositary. The northwest nursery fund shall be deposited by the director in such banks and financial institutions as may be selected which shall give to the director surety bonds executed by surety companies authorized to do business in this state, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each such bank or financial institution.

All moneys received by the director or any employee, shall be deposited each day, and as often during the day as advisable, in the authorized depositary selected by the director under the terms of this section. [1961 c 11 § 15.69.030. Prior: 1955 c 368 § 3.]

15.69.040 Northwest nursery fund—Expenditures. Moneys in the northwest nursery fund shall be expended by the director for defraying expenses of carrying out the agreements for the growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture and necessary expenses of operation and administration. [1961 c 11 § 15.69.040. Prior: 1955 c 368 § 4.]

Chapter 15.70
RURAL REHABILITATION

Sections

15.70.010 Director may receive federal funds for rural rehabilitation corporation. The director of the state department of agriculture is hereby designated as the state official of the state of Washington to make application to

and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of public law 499, 81st congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the Washington rural rehabilitation corporation. [1961 c 11 § 15.70.010. Prior: 1951 c 169 § 1.]

15.70.020 Director may delegate certain powers to secretary of agriculture. The director of agriculture is authorized, in his discretion, to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid act of the congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend and use in the state of Washington all or any part of such trust assets or any other funds of the state of Washington which may be appropriated for such uses for carrying out the purposes of titles I and II of the Bankhead-Jones farm tenant act, in accordance with the applicable provisions of title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements. [1961 c 11 § 15.70.020. Prior: 1951 c 169 § 2.]

15.70.030 Deposit and use of funds. Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of RCW 15.70.020 shall be received by the director of agriculture and by him deposited with the treasurer of the state. Such funds are hereby appropriated and may be expended or obligated by the director of agriculture for the purposes of RCW 15.70.020 or for use by the director of agriculture for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Washington rural rehabilitation corporation as may from time to time be agreed upon by the director of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said public law 499. [1961 c 11 § 15.70.030. Prior: 1951 c 169 § 3.]

15.70.040 Powers of director—In general. The director of agriculture is authorized and empowered to:

(1) Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract or agreement entered into or administered pursuant to this chapter and if, in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(2) Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which the director of agriculture has a lien by reason of judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the director of agriculture under this chapter, and

(3) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to RCW 15.70.020. [1961 c 11 § 15.70.040. Prior: 1951 c 169 § 4.]

15.70.050 No liability as to United States. The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the director of agriculture of the state of Washington pursuant to this chapter. [1961 c 11 § 15.70.050. Prior: 1951 c 169 § 5.]

Chapter 15.74
HARDWOODS COMMISSION

Sections

15.74.005 Legislative purpose. The legislature recognizes that the economic base of the state of Washington is directly tied to the development and management of forest industries and that efforts to enhance and promote the recognition and expansion of the hardwoods industry should be coordinated between state and federal agencies, the forest products industry, commissions, institutions of higher education, and other entities. The legislature further recognizes that the development of hardwood forests and hardwood products will require multispecie, sustained-yield management plans for industrial and nonindustrial timber tracts, the development of products and markets for all grades of hardwoods, a stable and predictable tax program for new and existing firms and financial assistance for the attraction and expansion of new and existing hardwood processing facilities. The legislature also recognizes that the welfare of the citizens of the state of Washington require, as a public purpose, a continuing effort toward the full utilization of hardwood forests and the hardwood products industry. [1990 c 142 § 1.]

15.74.010 Commission created. In recognition of the findings and purposes in RCW 15.74.005, there is created the Washington hardwoods commission, which is created solely for the purposes set forth in this chapter. The commission shall be comprised of seven members. All members shall be members of the hardwood industry. All members shall initially be appointed by the governor and shall be appointed to staggered terms. Three members shall be appointed for a two-year term, two members to a three-year term, and two members to a four-year term. The hardwoods commission shall, by January 1, 1991, develop a method of electing board members to replace the appointed

members. Each board member shall serve until the election of his or her successor. Five voting members of the commission constitute a quorum for the transaction of any business of the commission. Each member of the commission shall be a resident of the state and over the age of twenty-one. [1990 c 142 § 2.]

15.74.020 Commission authority. The commission shall have the power, duty, and responsibility to assist in the retention, expansion, and attraction of hardwood-related industries by creating a climate for development and support of the industry. The commission shall coordinate efforts to enhance and promote the expansion of the forest industry among state and federal agencies, industry organizations, and institutions of higher education. The commission shall have the power and duty to develop products and markets for various species and grades of hardwoods, and to study and recommend a tax program that will attract new firms and promote stability for existing firms. The commission shall also have as its duty the development of an enhancement and protection program that will reduce waste and respect environmental sensitivity. The commission will develop financial assistance programs from public and private moneys for attraction and expansion of new and existing primary, secondary, and tertiary processing facilities. It is also appropriate that the commission utilize recognized experts in educational institutions, public and private foundations, and agencies of the state, to facilitate research into economic development, hardwood silviculture, woodland management, and the development of new products. The commission will also work cooperatively with the department of natural resources in the development of best management practices for hardwood resources. [1990 c 142 § 3.]

15.74.030 Commission management. The commission shall have the power to elect a chair and such officers as the commission deems necessary and advisable. The commission shall elect a treasurer who shall be responsible for all receipts and disbursements by the commission. The treasurer's faithful discharge of duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its governance, which shall provide for the holding of an annual meeting for the election of officers and the transaction of other business and for such other meetings as the commission may direct. The commission shall do all things reasonably necessary to effect the purposes of this chapter. The commission shall have no legislative power. The commission may employ and discharge managers, secretaries, agents, attorneys, and other employees or staff, and may engage the services of independent contractors, prescribe their duties, and fix their compensation. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [1991 c 67 § 1; 1990 c 142 § 4.]

15.74.040 Financial requirements. The commission shall maintain an account with one or more public depositaries, and may deposit moneys in the depositary and expend moneys for purposes authorized by this chapter in the form of drafts made by the commission. The commission shall keep accurate records of all receipts, disbursements, and other financial transactions in accordance with generally accepted principles of accounting, available for audit by the state auditor. [1990 c 142 § 5.]

15.74.050 Obligations, liabilities, and claims. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principle, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other members of the commission. [1990 c 142 § 6.]

15.74.060 Assessments—Generally. To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods.

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment categories shall be based on the hardwood processor's production per calendar quarter. The assessment shall be levied based upon the following schedule:

CATEGORY	QUARTERLY PRODUCTION (THOUSAND TONS)	QUARTERLY ASSESSMENT
1	5 to 7.5	$ 150
2	7.5 to 15	$ 300
3	15 to 25	$ 600
4	25 to 35	$ 900
5	35 to 45	$ 1,200
6	45 to 62.5	$ 1,500
7	62.5 to 82.5	$ 2,250
8	82.5 to 125	$ 3,000
9	125 to 175	$ 4,500
10	175 to 250	$ 6,000
11	250 to 350	$ 9,000
12	350 to 450	$12,000
13	450 to 625	$15,000
14	625 to 875	$22,500
15	875 to 1125	$30,000
16	Over 1125	$35,000

The commission may develop by rule formulas for converting other units of measure to thousands of tons of production for determining the appropriate production category. The assessment shall be calculated based upon calendar quarters with the first assessment period beginning July 1, 1991. [1991 c 67 § 3; 1990 c 142 § 7.]

15.74.070 Assessments—Failure to pay. Any due and payable assessment levied under this chapter in such specified amount as may be determined by the commission shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the commission when payment is called for by the commission. In the event any person fails to pay the commission the full amount of such assessment or such other sum on or before the date due, the commission may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1991 c 67 § 2.]

15.74.900 Severability—1990 c 142. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 142 § 9.]

Chapter 15.76
AGRICULTURAL FAIRS, YOUTH SHOWS, EXHIBITIONS

Sections

County fairs: Chapter 36.37 RCW.

County property, lease for agricultural purposes: RCW 36.34.145.

15.76.100 Declaration of public interest—Allocation of state funds authorized. It is hereby declared that it is in the public interest to hold agricultural fairs, including the exhibition of livestock and agricultural produce of all kinds, as well as related arts and manufactures; including products of the farm home and educational contest, displays and demonstrations designed to train youth and to promote the welfare of farm people and rural living. Fairs qualifying hereunder shall be eligible for allocations from the state fair fund as provided in this chapter. [1961 c 61 § 1.]

15.76.110 Definitions. "Director" shall mean the director of agriculture. "Commission" shall mean the fairs commission created by this chapter. "State allocations" shall mean allocations from the state fair fund. [1961 c 61 § 2.]

15.76.120 Classification of fairs. For the purposes of this chapter all agricultural fairs in the state which may become eligible for state allocations shall be divided into categories, to wit:

(1) "Area fairs"—those not under the jurisdiction of boards of county commissioners; organized to serve an area larger than one county, having both open and junior participation, and having an extensive diversification of classes, displays and exhibits;

(2) "County and district fairs"—organized to serve the interests of single counties other than those in which a recognized area fair or a district fair as defined in RCW 36.37.050, is held and which are under the direct control and supervision of the county commissioners of the respective counties, which have both open and junior participation, but whose classes, displays and exhibits may be more restricted or limited than in the case of area or district fairs. There may be but one county fair in a single county: PROVIDED, HOWEVER, That the county commissioners of two or more counties may, by resolution, jointly sponsor a county fair.

(3) "Community fairs"—organized primarily to serve a smaller area than an area or county fair, which may have open or junior classes, displays, or exhibits. There may be more than one community fair in a county.

(4) "Youth shows and fairs"—approved by duly constituted agents of Washington State University and/or the Washington work force training and education coordinating board, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living. [1991 c 238 § 74; 1961 c 61 § 3.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

15.76.130 Application for state allocation—Purposes—Form. For the purpose of encouraging agricultural fairs and training rural youth, the board of trustees of any fair or youth show may apply to the director of agriculture for state allocations as hereinafter set forth. Such application shall be in such form as the director may prescribe. [1961 c 61 § 4.]

15.76.140 Eligibility requirements for state allocation. Before any agricultural fair may become eligible for state allocations it must have conducted two successful consecutive annual fairs immediately preceding application for such allocations, and have its application therefor approved by the director. [1965 ex.s. c 32 § 1; 1961 c 61 § 5.]

15.76.150 Allocation formula—Considerations. The director shall have the authority to make allocations from the state fair fund as follows: Eighty-five percent to participating agricultural fairs, distributed according to the merit of such fairs measured by a merit rating to be set up by the director. This merit rating shall take into account such factors as area and population served, open and/or youth participation, attendance, gate receipts, number and type of exhibits, premiums and prizes paid, community support,

evidence of successful achievement of the aims and purposes of the fair, extent of improvements made to grounds and facilities from year to year, and overall condition and appearance of grounds and facilities. The remaining fifteen percent of money in the state fair fund may be used for special assistance to any participating fair or fairs and for administrative expenses incurred in the administration of this chapter, including expenses incurred by the commission as may be approved by the director: PROVIDED, That not more than five percent of the state fair fund may be used for such expenses.

The division and payment of funds authorized in this section shall occur at such times as the director may prescribe. [1965 ex.s. c 32 § 2; 1961 c 61 § 6.]

15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form. Any state allocations made under this chapter to fairs or youth shows, other than fairs or youth shows operated by or for and under the control of one or more counties or other agencies, as defined in subsection (4) of RCW 15.76.120, shall be made only as a reimbursement in whole or in part for the payment of premiums and prizes awarded to participants in such fairs or youth shows. State allocations to fairs under the control of one or more counties shall be made to the county treasurer of the county in which the fair is held. State allocations to other publicly sponsored fairs or youth shows shall be made to such sponsor. The board of trustees of any private fair or youth show, as part of its application for any allocation under this chapter, and as a condition of such allocation, shall submit to the director a list of premiums and prizes awarded to participants in its last preceding fair or youth show. Such list shall contain the names of all premium and prize winners, a description of each prize or premium, including its amount or value, and the total values of all such awards. The list shall be in such form and contain such further information as the director may require, and shall be verified as to its accuracy by the oath of the president of the fair or youth show, together with that of the secretary or manager, subscribed thereon. [1961 c 61 § 7.]

15.76.165 Application of counties for capital improvement and maintenance assistance—Exemption of leased property from property taxation. Any county which owns or leases property from another governmental agency and provides such property for area or county and district agricultural fair purposes may apply to the director for special assistance in carrying out necessary capital improvements to such property and maintenance of the appurtenances thereto, and in the event such property and capital improvements are leased to any organization conducting an agricultural fair pursuant to chapter 15.76 RCW and chapter 257 of the Laws of 1955, such leasehold and such leased property shall be exempt from real and personal property taxation. [1973 c 117 § 1; 1969 c 85 § 1.]

15.76.170 Fairs commission—Creation, terms, compensation, powers and duties. There is hereby created a fairs commission to consist of the director of agriculture as ex officio member and chairman, and seven members appointed by the director to be persons who are interested in fair activities; at least three of whom shall be from the east side of the Cascades and three from the west side of the Cascades and one member at large. The first appointment shall be: Three for a one year term, two for a two year term, and two for a three year term, and thereafter the appointments shall be for three year terms.

Appointed members of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses, in accordance with RCW 43.03.050 and 43.03.060 payable on proper vouchers submitted to and approved by the director, and payable from that portion of the state fair fund set aside for administrative costs under this chapter. The commission shall meet at the call of the chairman, but at least annually. It shall be the duty of the commission to act as an advisory committee to the director, to assist in the preparation of the merit rating used in determining allocations to be made to fairs, and to perform such other duties as may be required by the director from time to time. [1984 c 287 § 18; 1975-'76 2nd ex.s. c 34 § 21; 1975 1st ex.s. c 7 § 11; 1961 c 61 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.76.180 Rules and regulations. The director shall have the power to adopt such rules and regulations as may be necessary or appropriate to carry out the purposes of this chapter. [1961 c 61 § 9.]

Chapter 15.80
WEIGHMASTERS

Sections

15.80.300 Definitions—Application. Terms used in this chapter shall have the meaning given to them in RCW 15.80.310 through 15.80.400 unless the context where used shall clearly indicate to the contrary. [1969 ex.s. c 100 § 1.]

15.80.310 "Department." "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 100 § 2.]

15.80.320 "Director." "Director" means the director of the department or his duly appointed representative. [1969 ex.s. c 100 § 3.]

15.80.330 "Person." "Person" means a natural person, individual, or firm, partnership, corporation, company, society, or association. This term shall import either the singular or plural, as the case may be. [1969 ex.s. c 100 § 4.]

15.80.340 "Licensed public weighmaster." "Licensed public weighmaster" also referred to as weighmaster, means any person, licensed under the provisions of this chapter, who weighs, measures or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure or count accepted as the accurate weight, or count upon which the purchase or sale of any commodity or upon which the basic charge or payment for services rendered is based. [1969 ex.s. c 100 § 5.]

15.80.350 "Weigher." "Weigher" means any person who is licensed under the provisions of this chapter and who is an agent or employee of a weighmaster and authorized by the weighmaster to issue certified statements of weight, measure or count. [1969 ex.s. c 100 § 6.]

15.80.360 "Vehicle." "Vehicle" means any device, other than a railroad car, in, upon, or by which any commodity, is or may be transported or drawn. [1969 ex.s. c 100 § 7.]

15.80.370 "Certified weight." "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a weighmaster or weigher in accordance with the provisions of this chapter or any regulation adopted thereunder. [1969 ex.s. c 100 § 8.]

15.80.380 "Commodity." "Commodity" means anything that may be weighed, measured or counted in a commercial transaction. [1969 ex.s. c 100 § 9.]

15.80.390 "Thing." "Thing" means anything used to move, handle, transport or contain any commodity for which a certified weight, measure or count is issued when such thing is used to handle, transport, or contain a commodity. [1969 ex.s. c 100 § 10.]

15.80.400 "Retail merchant." "Retail merchant" means and includes any person operating from a bona fide fixed or permanent location at which place all of the retail business of said merchant is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities which have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location. [1969 ex.s. c 100 § 11.]

15.80.410 Director's duty to enforce—Adoption of rules. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act), as enacted or hereafter amended, concerning the adoption of rules. [1969 ex.s. c 100 § 12.]

15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions. It shall be a violation of this chapter to transport by highway any hay, straw or grain which has been purchased by weight or will be purchased by weight, unless it is weighed and a certified weight ticket is issued thereon, by the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay, straw or grain is to be unloaded: PROVIDED, HOWEVER, That this section shall not apply to the following:

(1) The transportation of, or sale of, hay, straw or grain by the primary producer thereof;

(2) The transportation of hay, straw or grain by an agriculturalist for use in his own growing, or animal or poultry husbandry endeavors;

(3) The transportation of grain by a party who is either a warehouseman or grain dealer and who is licensed under the grain warehouse laws and who makes such shipment in the course of the business for which he is so licensed;

(4) The transportation of hay, straw or grain by retail merchants, except for the provisions of RCW 15.80.430 and 15.80.440;

(5) The transportation of grain from a warehouse licensed under the grain warehouse laws when the transported grain is consigned directly to a public terminal warehouse. [1969 ex.s. c 100 § 13.]

15.80.430 Certificates of weight and invoices to be carried with loads. Certificates of weight issued by licensed public weighmasters and invoices for sales by a retail merchant, if the commodity is being hauled by or for such retail merchant, shall be carried with all loads of hay, straw or grain when in transit. [1969 ex.s. c 100 § 14.]

15.80.440 Reweighing—Weighing—Variance from invoiced weight. The driver of any vehicle previously weighed by a licensed public weighmaster may be required to reweigh the vehicle and load at the nearest scale.

The driver of any vehicle operated by or for a retail merchant which vehicle contains hay, straw, or grain may be required to weigh the vehicle and load at the nearest scale, and if the weight is found to be less than the amount appearing on the invoice, a copy of which is required to be carried on the vehicle, the director shall report the finding to the consignee and may cause such retail merchant to be prosecuted in accordance with the provisions of this chapter. [1969 ex.s. c 100 § 15.]

15.80.450 Weighmaster's license—Applications—Fee—Bond. Any person may apply to the director for a weighmaster's license. Such application shall be on a form prescribed by the director and shall include:

(1) The full name of the person applying for such license and if the applicant is a partnership, association or corporation, the full name of each member of the partnership or the names of the officers of the association or corporation;

(2) The principal business address of the applicant in this state and elsewhere;

(3) The names of the persons authorized to receive and accept service of summons and legal notice of all kinds for the applicant;

(4) The location of any scale or scales subject to the applicant's control and from which certified weights will be issued; and

(5) Such other information as the director feels necessary to carry out the purposes of this chapter.

Such annual application shall be accompanied by a license fee of twenty dollars for each scale from which certified weights will be issued and a bond as provided for in RCW 15.80.480. [1969 ex.s. c 100 § 16.]

15.80.460 Weighmaster's license—Issuance—Expiration date. The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and the rules adopted hereunder and that such applicant is of good moral character, not less than eighteen years of age, and has the ability to weigh accurately and make correct certified weight tickets. Any license issued under this chapter shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 7; 1971 ex.s. c 292 § 14; 1969 ex.s. c 100 § 17.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

15.80.470 Weighmaster's license—Renewal date—Penalty fee. If an application for renewal of any license provided for in this chapter is not filed prior to the expiration date, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued. The penalty shall not apply if the applicant furnishes an affidavit that he has not acted as a weighmaster or weigher subsequent to the expiration of his or her prior license. [1991 c 109 § 8; 1969 ex.s. c 100 § 18.]

15.80.480 Surety bond. Any applicant for a weighmaster's license shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of one thousand dollars. The bond shall be of standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted hereunder. Said bond shall be to the state for the benefit of every person availing himself of the services and certifications issued by a weighmaster, or weigher subject to his control. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face value of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. All such sureties on a bond, as provided herein, shall only be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. [1969 ex.s. c 100 § 19.]

15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee. Any weighmaster may file an application with the director for a license for any employee or agent to operate and issue certified weight tickets from a scale which such weighmaster is licensed to operate under the provisions of this chapter. Such application shall be submitted on a form prescribed by the director and shall contain the following:

(1) Name of the weighmaster;

(2) The full name of the employee or agent and his resident address;

(3) The position held by such person with the weighmaster;

(4) The scale or scales from which such employee or agent will issue certified weights; and

(5) Signature of the weigher and the weighmaster.

Such annual application shall be accompanied by a license fee of five dollars. [1969 ex.s. c 100 § 20.]

15.80.500 Weigher's license—Issuance—Expiration date. Upon the director's satisfaction that the applicant is of good moral character, has the ability to weigh accurately and make correct certified weight tickets and that he is an employee or agent of the weighmaster, the director shall issue a weigher's license which will expire annually on a

date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 9; 1969 ex.s. c 100 § 21.]

15.80.510 Duties of weighmaster. A licensed public weighmaster shall: (1) Keep the scale or scales upon which he weighs any commodity or thing, in conformity with the standards of weights and measures; (2) carefully and correctly weigh and certify the gross, tare and net weights of any load of any commodity or thing required to be weighed; and (3) without charge, weigh any commodity or thing brought to his scale by an inspector authorized by the director, and issue a certificate of the weights thereof. [1969 ex.s. c 100 § 22.]

15.80.520 Certification of weights—Impression seal—Fee—Annual renewal. Certification of weights shall be made by means of an impression seal, the impress of which shall be placed by the weighmaster or weigher making the weight determination upon the weights shown on the weight tickets. The impression seal shall be procured from the director upon the payment of a fee of five dollars, and such fee shall accompany the applicant's application for a weighmaster's license. The seal shall be retained by the weighmaster upon payment of an annual renewal fee of five dollars, and the fee shall accompany the annual renewal application for a weighmaster's license. Any replacement seal needed shall be procured from the director upon payment to the department of the cost for such replacement. An impression seal shall be used only at the scale to which it is assigned, and remains the property of the state and shall be returned forthwith to the director upon the termination, suspension, or revocation of the weighmaster's license. [1983 c 95 § 6; 1969 ex.s. c 100 § 23.]

15.80.530 Certified weight ticket—Form—Contents—Evidence. The certified weight ticket shall be of a form approved by the director and shall contain the following information:

(1) The date of issuance;

(2) The kind of commodity weighed, measured, or counted;

(3) The name of owner, agent, or consignee of the commodity weighed;

(4) The name of seller, agent or consignor;

(5) The accurate weight, measure or count of the commodity weighed, measured or counted; including the entry of the gross, tare and/or net weight, where applicable;

(6) The identifying numerals or symbols, if any, of each container separately weighed and the motor vehicle license number of each vehicle separately weighed;

(7) The means by which the commodity was being transported at the time it was weighed, measured or counted;

(8) The name of the city or town where such commodity was weighed;

(9) The complete signature of weighmaster or weigher who weighed, measured or counted the commodity; and

(10) Such other available information as may be necessary to distinguish or identify the commodity.

Such weight certificates when so made and properly signed and sealed shall be prima facie evidence of the accuracy of the weights, measures or count shown, as a certified weight, measure or count. [1969 ex.s. c 100 § 24.]

15.80.540 Copies of weight tickets. Certified weight tickets shall be made in triplicate, one copy to be delivered to the person receiving the weighed commodity at the time of delivery, which copy shall accompany the vehicle that transports such commodity, one copy to be forwarded to the seller by the carrier of the weighed commodity, and one copy to be retained by the weighmaster that weighed the vehicle transporting such commodity. The copy retained by the weighmaster shall be kept at least for a period of one year, and such copies and such other records as the director shall determine necessary to carry out the purposes of this chapter shall be made available at all reasonable business hours for inspection by the director. [1969 ex.s. c 100 § 25.]

15.80.550 Weighmaster or weigher to determine weights—Automatic devices. No weighmaster or weigher shall enter a weight value on a certified weight ticket that he has not determined and he shall not make a weight entry on a weight ticket issued at any other location: PROVIDED, HOWEVER, That if the director determines that an automatic weighing or measuring device can accurately and safely issue weights in conformance with the purpose of this chapter, he may adopt a regulation to provide for the use of such a device for the issuance of certified weight tickets. The certified weight ticket shall be so prepared that it will show the weight or weights actually determined by the weighmaster. In any case in which only the gross, the tare or the net weight is determined by the weighmaster he shall strike through or otherwise cancel the printed entries for the weights not determined or computed by him. [1969 ex.s. c 100 § 26.]

15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices. A licensed public weighmaster shall in making a weight determination as provided for in this chapter, use a weighing device that is suitable for the weighing of the type and amount of commodity being weighed. The director shall cause to be tested for proper state standards of weight all weighing or measuring devices utilized by any licensed public weighmaster. Certified weights shall not be issued over a device that has been rejected or condemned for repair or use by the director until such device has been repaired. [1969 ex.s. c 100 § 27.]

15.80.570 Weighing devices—Rated capacity to exceed weight of load. A weighmaster shall not use a weighing device to determine the weight of a load when the weight of such load exceeds the manufacturer's maximum rated capacity for such weighing device. If upon inspection the director declares that the maximum rated capacity of any weighing device is less than the manufacturer's maximum rated capacity, the weighmaster shall not weigh a load that exceeds the director's declared maximum rated capacity for such weighing device. [1969 ex.s. c 100 § 28.]

15.80.580 Weighing devices—Platform size to sufficiently accommodate vehicles. No weighmaster shall weigh a vehicle or combination of vehicles to determine the weight of such vehicle or combination of vehicles unless the weighing device has a platform of sufficient size to accommodate such vehicle or combination of vehicles fully and completely as one entire unit. When a combination of vehicles must be broken up into separate units in order to be weighed as prescribed, each separate unit shall be entirely disconnected before weighing and a separate certified weight ticket shall be issued for each separate unit. [1969 ex.s. c 100 § 29.]

15.80.590 Denial, suspension, or revocation of licenses—Hearing. The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, in any case in which he finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. Such hearings shall be subject to chapter 34.05 RCW (Administrative Procedure Act) concerning adjudicative proceedings. [1989 c 175 § 52; 1969 ex.s. c 100 § 30.]

Effective date—1989 c 175: See note following RCW 34.05.010.

15.80.600 Hearings for denial, suspension or revocation of licenses—Notice—Location. For hearings for revocations, suspension, or denial of a license, the director shall give the licensee or applicant such notice as is required under the provisions of chapter 34.05 RCW, as enacted or hereafter amended. Such hearings shall be held in the county where the licensee resides. [1969 ex.s. c 100 § 31.]

15.80.610 Subpoenas—Oaths. The director, for the purposes of this chapter, may issue subpoenas to compel the attendance of witnesses, and/or the production of books and/or documents anywhere in the state. The party shall have opportunity to make his defense, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. [1969 ex.s. c 100 § 32.]

15.80.620 Assuming to act as weighmaster or weigher. It shall be unlawful for any person not licensed pursuant to the provisions of this chapter to:

(1) Hold himself out, in any manner, as a weighmaster or weigher; or

(2) Issue any ticket as a certified weight ticket. [1969 ex.s. c 100 § 33.]

15.80.630 Falsifying weight tickets, weight or count—Unlawfully delegating—Presealing before weighing. It shall be unlawful for a weighmaster or weigher to falsify a certified weight ticket, or to cause an incorrect weight, measure or count to be determined, or delegate his authority to any person not licensed as a weigher, or to preseal a weight ticket with his official seal before performing the act of weighing. [1969 ex.s. c 100 § 34.]

15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty. Any person who shall mark, stamp or write any false weight ticket, scale ticket, or weight certificate, knowing it to be false, and any person who influences, or attempts to wrongfully influence any licensed public weighmaster or weigher in the performance of his official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year in the county jail, or by both such fine and imprisonment. [1969 ex.s. c 100 § 35.]

15.80.650 Violations—Penalty. Any person violating any provision of this chapter, except as provided in RCW 15.80.640, or rules adopted hereunder, is guilty of a misdemeanor and upon a second or subsequent offense, shall be guilty of a gross misdemeanor: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 100 § 36.]

15.80.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 ex.s. c 100 § 37.]

15.80.910 Effective date—1969 ex.s. c 100. This act shall take effect on July 1, 1969. [1969 ex.s. c 100 § 38.]

15.80.920 Severability—1969 ex.s. c 100. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1969 ex.s. c 100 § 39.]

Chapter 15.83
AGRICULTURAL MARKETING AND FAIR PRACTICES

Sections

15.83.005 Intent. Agricultural products are produced by many individual farmers and ranchers located throughout the state. The efficient production and marketing of agricultural products by farmers, ranchers, and handlers is of vital concern to the welfare and general economy of the state. It

is the purpose of this chapter to establish standards of fair practices required of handlers, producers, and associations of producers, with respect to certain agricultural commodities, to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

It is the intent of the legislature that a workable process be developed through which a fair price and other contract terms can be arrived at through negotiations between processors of agricultural products and an accredited association of producers, and that in developing rules and administering this chapter the director of agriculture shall recognize this intent. [1989 c 355 § 1.]

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

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiation agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means sweet corn and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the federal agriculture marketing act of 1929 or in section 1 of 42 Stat. 388.

(5) "Director" means the director of the department of agriculture.

(6) "Handler" means a processor or a person engaged in the business or practice of:

(a) Acquiring agricultural products from producers or associations of producers for use by a processor;

(b) Processing agricultural products received from producers or associations of producers, provided that a cooperative association owned by producers shall not be a handler except when contracting for crops from producers who are not members of the cooperative association;

(c) Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product for use by a processor; or

(d) Acting as an agent or broker for a handler in the performance of any function or act specified in (a), (b), or (c) of this subsection.

(7) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date and concluding within thirty days of the normal planting date to make a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the price, terms of sale, compensation for products produced under contract, or other terms relating to the production or sale of these products: PROVIDED, That neither party shall be required to disclose proprietary business or financial records or information.

(8) "Negotiating unit" means a negotiating unit approved by the director under RCW 15.83.020.

(9) "Person" means an individual, partnership, corporation, association, or any other entity.

(10) "Processor" means any person that purchases agricultural crops from a producer and cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner for eventual resale. A person who solely cleans, sorts, grades, and packages a farm product for sale without altering the natural condition of the product is not a processor. A person processing any portion of a crop is a processor.

(11) "Producer" means a person engaged in the production of agricultural products as a farmer or planter, including a grower or farmer furnishing inputs, production management, or facilities for growing or raising agricultural products. A producer who is also a handler shall be considered a handler under this chapter.

(12) "Qualified commodity" means agricultural products as defined in subsection (3) of this section. [1989 c 355 § 2.]

15.83.020 Negotiating agents—Association of producers—Accreditation. (1) An association of producers may file an application with the director:

(a) Requesting accreditation to serve as the exclusive negotiating agent on behalf of its producer members who are within a proposed negotiating unit with respect to any qualified commodity;

(b) Describing geographical boundaries of the proposed negotiating unit;

(c) Specifying the number of producers and the quantity of products included within the proposed negotiating unit;

(d) Specifying the number and location of the producers and the quantity of products represented by the association; and

(e) Supplying any other information required by the director.

(2) Within a reasonable time after receiving an application under subsection (1) of this section, the director shall approve or disapprove the application in accordance with this section.

(a) The director shall approve the initial application or renewal if the director determines that:

(i) The association is owned and controlled by producers under the charter documents or bylaws of the association;

(ii) The association has valid and binding contracts with its members empowering the association to sell or negotiate terms of sale of its members' products or to negotiate for compensation for products produced under contract by its members;

(iii) The association represents a sufficient percentage of producers or that its members produce a sufficient percentage of agricultural products to enable it to function as an effective agent for producers in negotiating with a given handler as defined in rules promulgated by the department. In making this finding, the director shall exclude any quantity of the agricultural products contracted by producers with producer-owned and controlled processing cooperatives

with its members and any quantity of these products produced by handlers;

(iv) One of the association's functions is to act as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of the products of its members, or for compensation for products produced by its members under contract; and

(v) Accreditation would not be contrary to the policies established in RCW 15.83.005.

(b) If the director does not approve the application under (a) of this subsection, then the association of producers may file an amended application with the director. The director, within a reasonable time, shall approve the amended application if it meets the requirements set out in (a) of this subsection.

(3) At the discretion of the director, or upon submission of a timely filed petition by an affected handler or an affected association of producers, the association of producers accredited under this section may be required by the director to renew the application for accreditation by providing the information required under subsection (1) of this section. [1989 c 355 § 3.]

15.83.030 Unlawful practices of handlers. It shall be unlawful for any handler to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with an association of producers accredited under RCW 15.83.020 with respect to any qualified commodity: PROVIDED, That the obligation to negotiate does not require either party to agree to a proposal, to make a concession, or to enter into a contract;

(2) To coerce any producer in the exercise of his or her right to contract with, join, refrain from contracting with or joining, belong to an association of producers, or refuse to deal with any producer because of the exercise of that producer's right to contract with, join, or belong to an association or because of that producer's promotion of legislation on behalf of an association of producers;

(3) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of that producer's membership in or contract with an association of producers or because of that producer's promotion of legislation on behalf of an association of producers;

(4) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler;

(5) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association of producers;

(6) To make knowingly false reports about the finances, management, or activities of associations of producers or handlers; or

(7) To conspire, agree, or arrange with any other person to do, aid, or abet any act made unlawful by this chapter. [1989 c 355 § 4.]

15.83.040 Unlawful practices of association of producers or members. It shall be unlawful for any accredited association of producers or members of such association to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with a handler for any qualified commodity for which the association is accredited under RCW 15.83.020;

(2) To coerce or intimidate a handler to breach, cancel, or terminate a marketing contract with an individual producer, association of producers, or a member of an association;

(3) To knowingly make or circulate false reports about the finances, management, or activities of an association of producers or a handler;

(4) To coerce or intimidate a producer to enter into, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers;

(5) To conspire, agree, or arrange with any other person to do, aid, or abet any practice which is in violation of this chapter; or

(6) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing to contract or negotiate with a processor. [1989 c 355 § 5.]

15.83.050 Violations of chapter—Complaint. (1) If any person is charged with violating any provision of this chapter, the director shall investigate the charges. If, upon investigation, the director has reasonable cause to believe that the person charged has violated the provision, the director shall issue and cause to be served upon the person, a complaint stating the charges. A hearing on the charges shall be conducted in accordance with the provisions of chapter 34.05 RCW concerning contested cases.

(2) No complaint may be issued based upon any act occurring more than six months before the filing of the charge with the director. At the discretion of the director, any other person may be allowed to intervene in the proceeding and to present testimony and other evidence.

(3) If upon the preponderance of the evidence taken, the director is of the opinion that any person named in the complaint has engaged in or is engaging in any prohibited practice, the director shall make and enter findings of fact and shall issue and cause to be served on that person, an order requiring that person to cease and desist from the practice and to take affirmative action to further the policies of this chapter. The order may also require the person to make reports from time to time showing the extent of compliance with the order. If, upon the preponderance of the testimony and other evidence, the director determines that the person named in the complaint has not engaged in or is not engaging in any prohibited practice, the director shall make and enter findings of fact and an order dismissing the complaint. [1989 c 355 § 6.]

15.83.060 Director's authority—Recordkeeping—Cooperation. If required to carry out the objectives of this chapter, including the conduct of any investigations or hearing:

(1) The director shall require any person to:

(a) Establish and maintain records;

(b) Make reports; and

(c) Provide other information as may be reasonably required.

(2) Any person subject to the provisions of this chapter shall provide the information, records, and reports reasonably required by the director, or make such material available to the director for inspection and/or copying at reasonable times and places, except that no person shall be required under this section to provide to the director proprietary business or financial records or information. [1989 c 355 § 7.]

15.83.070 Injury due to unlawful practices—Damages. A person injured in his or her business or property by reason of any violation of or conspiracy to violate RCW 15.83.030 or 15.83.040 may sue in a court of competent jurisdiction of the county in which such violation occurred without respect to the amount in controversy, and shall recover damages sustained, including reasonable attorneys' fees and costs of bringing the suit. Any action to enforce any cause of action under this section shall be forever barred unless commenced not later than two years after the cause of action accrues. [1989 c 355 § 8.]

15.83.080 Unlawful practices—Civil penalty. A person who violates RCW 15.83.030 or 15.83.040 may be assessed a civil penalty by the director of not more than five thousand dollars for each offense. No civil penalty may be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to chapter 34.05 RCW. In determining the amount of the penalty, the director shall consider the size of the business of the person charged, the penalty's affect [effect] on the person's ability to continue in business, and the gravity of the violation. If the director is unable to collect the civil penalty, the director shall refer the collection to the attorney general. [1989 c 355 § 9.]

15.83.090 Injunction. The director or any aggrieved producer, accredited association, or handler may bring an action to enjoin the violation of any provision of this chapter or any regulation made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1989 c 355 § 10.]

15.83.100 Rules. The director may promulgate such rules in accordance with chapter 34.05 RCW, and orders, as may be necessary to carry out this chapter. [1989 c 355 § 11.]

15.83.110 Advisory committee. The director shall establish an advisory committee consisting of the following persons: Six producers who are producers from names submitted by an association of producers, and six handlers subject to this chapter from names submitted by handlers. The advisory committee shall study and report on all issues related to this chapter. [1989 c 355 § 12.]

15.83.900 Short title. This chapter may be known and cited as the agricultural marketing and fair practices act. [1989 c 355 § 13.]

15.83.905 Severability—1989 c 355. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 355 § 14.]

Chapter 15.85
AQUACULTURE MARKETING

Sections

Aquaculture disease control: Chapter 75.58 RCW.

15.85.010 Legislative declaration. The legislature declares that aquatic farming provides a consistent source of quality food, offers opportunities of new jobs, increased farm income stability, and improves balance of trade.

The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state.

The legislature finds that aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agriculture industry within the state.

The legislature further finds that in order to ensure the maximum yield and quality of cultured aquatic products, the department of fisheries should provide diagnostic services that are workable and proven remedies to aquaculture disease problems.

It is therefore the policy of this state to encourage the development and expansion of aquaculture within the state. It is also the policy of this state to protect wildstock fisheries by providing an effective disease inspection and control program and prohibiting the release of salmon or steelhead trout by the private sector into the public waters of the state and the subsequent recapture of such species as in the practice commonly known as ocean ranching. [1985 c 457 § 1.]

Release and recapture of salmon or steelhead unlawful: RCW 75.08.300.

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

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or

on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

Scientific Name	Common Name
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	Sturgeon

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with RCW 75.28.245.

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture. [1989 c 176 § 3; 1985 c 457 § 2.]

15.85.030 Department principal agency for aquaculture marketing support. The department is the principal state agency for providing state marketing support services for the private sector aquaculture industry. [1985 c 457 § 3.]

15.85.040 Rules. The department shall adopt rules under chapter 34.05 RCW to implement this chapter. [1985 c 457 § 7.]

15.85.050 Program to assist marketing and promotion of aquaculture products. The department shall exercise its authorities, including those provided by chapters 15.64, 15.65, 15.66, and 43.23 RCW, to develop a program for assisting the state's aquaculture industry to market and promote the use of its products. [1989 c 11 § 2; 1985 c 457 § 4.]

Severability—1989 c 11: See note following RCW 9A.56.220.

15.85.060 Private sector cultured aquatic products—Identification—Rules. The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the departments of fisheries and wildlife to administer and enforce Titles 75 and 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title 75 or 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the directors of the departments of fisheries and wildlife to ensure that such rules enable the departments of fisheries and wildlife to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section. [1988 c 36 § 6; 1985 c 457 § 5.]

Chapter 15.86
ORGANIC FOOD PRODUCTS

Sections

Kosher food products: Chapter 69.90 RCW.

15.86.010 Purpose. The legislature recognizes a public benefit in establishing standards for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic." Such standards shall also facilitate the development of out-of-state markets for Washington food grown by organic methods. [1992 c 71 § 1; 1985 c 247 § 1.]

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

(1) "Director" means the director of the department of agriculture or the director's designee.

(2) "Organic food" means any agricultural product, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic, other than the phrase "transition to organic food," in its labeling or advertising.

(3) "Producer" means any person or organization who or which grows, raises, or produces an agricultural product.

(4) "Vendor" means anyone who sells or arranges the sale of organic food to the consumer or another vendor.

(5) "Transition to organic food" means any food product that satisfies all of the requirements of organic food except the time requirements and satisfied all of the requirements of RCW 15.86.031.

(6) "Organic certifying agent" means any third-party certification organization that is recognized by the director by rule as being one which imposes, for certification, standards consistent with this chapter.

(7) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing organic food.

(8) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(9) "Department" means the state department of agriculture.

(10) "Represent" means to hold out as or to advertise.

(11) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media. [1992 c 71 § 2; 1989 c 354 § 32; 1985 c 247 § 2.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.86.030 Marketing of organic products—Restrictions. To be labeled, sold, or represented as an organic food, a product shall be produced with only those materials and practices approved under RCW 15.86.060. A producer, processor, or a vendor shall not represent, sell, or offer for sale any food product with the representation that the product is an organic food if the producer, processor, or vendor knows, or in the case of a producer or processor has reason to know, that the food has been grown, raised, or produced with the use of any prohibited materials listed by the director under RCW 15.86.060. Organic animal products shall be considered as "grown, raised, or produced" with a substance listed by the director under RCW 15.86.060 if the substance has been applied to the plants, soil, water, or animal, on or in which the organic animal product is being produced during such time frame as specified by the director by rule. Other food products shall be considered as "grown, raised, or produced" with a substance listed by the director under RCW 15.86.060 if the substance is applied to the plants, soil, or water, on or in which the food product is being produced at any time from three years before harvest to the final sale to retail purchasers. [1992 c 71 § 3; 1989 c 354 § 30; 1985 c 247 § 3.]

Effective date—1989 c 354 § 30: "Section 30 of this act shall take effect on January 1, 1991." [1989 c 354 § 87.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.86.031 "Transition to organic food"—Out-of-state products. (1) Except as provided in RCW 15.86.100, it shall be unlawful to represent, sell, or offer for sale as organic food, products that have been grown, raised, or produced if harvest of the food product occurs within three years of the most recent use of any prohibited substance as listed by the director under RCW 15.86.060.

(2) Food products may be sold as "transition to organic food" if they have had no applications of prohibited substances within one year before harvest of the food crop.

(3) No out-of-state products shall be labeled or sold as organic without having first received an organic certification from an organic certifying agent meeting all requirements established under this chapter. [1992 c 71 § 4; 1989 c 354 § 31.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.86.035 Transition to organic food—Proof. (1) A producer or a vendor shall not sell or offer for sale any food product with the representation that the food product is a transition to organic food if the producer or vendor knows, or has reason to know, that the food product does not satisfy the requirements of RCW 15.86.020(5).

(2) A producer shall not sell to a vendor any food product that the producer represents as a transition to organic food unless, before the sale, the producer provides the vendor with a sworn statement that the producer has grown, raised, or produced the product in conformance with RCW 15.86.020(5) and 15.86.031. [1989 c 354 § 33.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.86.050 Producers to provide proof of compliance with law. A producer shall not sell to a vendor or processor any food product which the producer represents as an organic food unless before the sale the producer provides the vendor or processor with an organic food certificate or a sworn statement that the producer has grown, raised, or produced the product in conformance with this chapter. [1992 c 71 § 5; 1985 c 247 § 5.]

15.86.060 Rules, generally—List of approved substances—Violations—Penalties. (1) The director shall adopt such rules and regulations, in conformity with chapter 34.05 RCW, as the director believes are appropriate for the proper administration of this chapter.

(2) The director shall establish a list of approved substances that may be used in the production, processing, and handling of organic food. This list shall:

(a) Approve the use of natural substances except for specific natural substances that may not be used in the production and handling of agricultural products labeled as organic because these substances would be harmful to human health or the environment and are inconsistent with organic farming principles;

(b) Prohibit the use of synthetic substances except for specific synthetic substances that may be used in the production and handling of agricultural products labeled as organic because these substances:

(i) Would not be harmful to human health or the environment;

(ii) Are necessary to the production or handling of the agricultural products;

(iii) Are consistent with organic farming principles; and

(iv) Are used in the production of agricultural products and contain active synthetic ingredients in the following categories: Copper and sulfur compounds; toxins derived from bacteria; pheromones; soaps; horticultural oils; vitamins and minerals; livestock parasiticides and medicines; and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers; or

(v) Are used in production and contain synthetic inert ingredients.

(3) The director shall issue orders to producers, processors, or vendors whom he or she finds are violating any provision of this chapter, or rules or regulations adopted under this chapter, to cease their violations and desist from future violations. Whenever the director finds that a producer, processor, or vendor has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of the following amounts: (a) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and (b) one thousand dollars.

(4) The director may deny, suspend, or revoke a certification provided for in this chapter if he or she determines that an applicant or certified person has violated this chapter or rules adopted under it. [1992 c 71 § 7; 1985 c 247 § 6.]

15.86.070 Certification program—Disposition of fees. The director may adopt rules establishing a certification program for producers, processors, and vendors of organic or transition to organic food. The rules may govern, but are not limited to governing: The number and scheduling of on-site visits, both announced and unannounced, by certification personnel; recordkeeping requirements; and the submission of product samples for chemical analysis. The rules shall include a fee schedule that will provide for the recovery of the full cost of the organic food program. Fees collected under this section shall be deposited in an account within the agricultural local fund and the revenue from such fees shall be used solely for carrying out the provisions of this section, and no appropriation is required for disbursement from the fund. The director may employ such personnel as are necessary to carry out the provisions of this section. [1992 c 71 § 10; 1989 c 354 § 34; 1987 c 393 § 12.]

Severability—1989 c 354: See note following RCW 15.32.010.

15.86.080 Labeling and recordkeeping requirements. Organic food products handled, processed, sold, offered for sale, advertised, or represented shall be labeled as organic on all invoices, boxes, bins, and other packaging and documentation associated with the product. All organic food products sold or processed in the state shall have recordkeeping sufficient to track the product to the farm where the food was grown, raised, or produced. [1992 c 71 § 6.]

Captions not law—1992 c 71: "Captions as used in sections 6, 8, 9, and 13 of this act do not constitute part of the law." [1992 c 71 § 13.]

15.86.090 Mandatory certification—Exceptions. (1) It is unlawful for any person to sell, offer for sale, or process any agricultural product within this state with an organic label unless that person is certified under this chapter by the department or an official organic certifying agent.

(2) Subsection (1) of this section shall not apply to (a) final retailers of organic food that do not process organic food products or (b) producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers. [1992 c 71 § 8.]

Captions not law—1992 c 71: See note following RCW 15.86.080.

15.86.100 Drift of prohibited substances—Tolerance levels. (1) An agricultural product that is being grown, raised, or produced under the provisions of this chapter may not be labeled, sold, or represented as organic if during the course of the crop year it is subjected to drift of materials not on the approved substances list as established by the director under RCW 15.86.060.

An agricultural product that is being grown, raised, or produced under the provisions of this chapter and is subjected to drift of prohibited materials may be labeled or sold as organic in the subsequent crop year as long as the tolerance levels of prohibited materials do not exceed the levels stated in subsection (2) of this section.

(2) An agricultural product that is being grown, raised, or produced under the provisions of this chapter and contains residues of materials not on the approved substances list established by the director under RCW 15.86.060 in excess of five percent of the United States environmental protection agency tolerance level or, where there is no tolerance level, five percent of the United States food and drug administration action level may not be labeled, sold, or represented as organic. [1992 c 71 § 9.]

Captions not law—1992 c 71: See note following RCW 15.86.080.

15.86.110 Confidentiality of business related information. (1) Except as provided in subsection (2) of this section, the department shall keep confidential any business related information obtained under this chapter concerning an entity certified under this chapter or an applicant for such certification and such information shall be exempt from public inspection and copying under chapter 42.17 RCW.

(2) Applications for certification under this chapter and laboratory analyses pertaining to that certification shall be available for public inspection and copying. [1992 c 71 § 11.]

Chapter 15.88
WINE COMMISSION

Sections

15.88.010 Legislative declaration. The legislature declares that:

(1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy.

(2) The sale in the state and export to other states and abroad of wine made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and have an important stabilizing effect on prices received by agricultural producers. Development of exports of these commodities abroad will contribute favorably to the balance of trade of the United States and of the state. The sale and export are therefore affected with the public interest.

(3) The production of wine grapes in the state is a new and important segment of Washington agriculture which has potential for greater contribution to the economy of the state if it undergoes healthy development.

(4) The general welfare of the people of the state will be served by healthy development of the activities of growing and processing wine grapes, which development will improve the tax bases of local communities in which agricultural land and processing facilities are located, and obviate the need for state and federal funding of local services. The industries are therefore affected with the public interest.

(5) Creation of a commission for the public purpose of administering the revenue of the commission under RCW 66.24.210(3) for the enhancement of production of wine grapes and wine and the marketing of Washington wine will materially advance the industries of growing and processing wine grapes and thereby the interests of the citizens of the state. [1987 c 452 § 1.]

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

(1) "Commission" means the Washington wine commission.

(2) "Director" means the director of agriculture or the director's duly appointed representative.

(3) "Department" means the department of agriculture.

(4) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(5) "Grower" means a person who has at least five acres in production of vinifera grapes.

(6) "Growers' association" means a nonprofit association of Washington producers of vinifera grapes, whether or not incorporated, which the director finds to comprise the interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group of growers of vinifera grapes within the state identified by the director as fairly representing growers of vinifera grapes within the state.

(7) "Vinifera grapes" means the agricultural product commonly known as VITIS VINIFERA and those hybrid of VITIS VINIFERA which have predominantly the character of VITIS VINIFERA.

(8) "Producer" means any person or other entity which grows within the state vinifera grapes or any person or other entity licensed under Title 66 RCW to produce within the state wine made predominantly from vinifera grapes.

(9) "Wine producer" means any person or other entity licensed under Title 66 RCW to produce within the state wine from vinifera grapes.

(10) "Eastern Washington" means that portion of the state lying east of the Cascade mountain range.

(11) "Western Washington" means that portion of the state lying west of the Cascade mountain range.

(12) "Wine" for the purposes of this section shall be as defined in RCW 66.04.010.

(13) "Wine institute" means a nonprofit association of Washington wine producers, whether or not incorporated, which the director finds to comprise interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group composed of all such producers identified as actively engaged in the production of wine within the state.

(14) "Handler" means any Washington winery, or processor, juicer, grape broker, agent, or person buying or receiving vinifera grapes to be passed on or exported either as grapes, juice, or wine. [1988 c 257 § 6; 1987 c 452 § 2.]

15.88.030 Wine commission created—Composition. (1) There is created an agricultural commodity commission to be known and designated as the Washington wine commission. Except as provided in RCW 15.88.100(2), the commission shall be composed of eleven voting members; five voting members shall be growers, five voting members shall be wine producers, and one voting member shall be a wine wholesaler licensed under RCW 66.24.200. Of the grower members, at least one shall be a person who does not have over fifty acres of vinifera grapes in production, at least one shall be a person who has over one hundred acres of vinifera grapes in production, and two may be persons who produce and sell their own wine. Of the wine producer members, at least one shall be a person producing not more than twenty-five thousand gallons of wine annually, at least one shall be a person producing over one million gallons of wine annually, and at least two shall be persons who produce wine from their own grapes. In addition, at least one member shall be a wine producer located in western Wash-

ington and at least two members shall be wine producers located in eastern Washington.

(2) In addition to the voting members identified in subsection (1) of this section, the commission shall have one nonvoting member who is a wine producer in this state whose principal wine or wines are produced from fruit other than vinifera grapes. The director of agriculture, or the director's designee, shall serve as an ex officio, nonvoting member.

(3) Except as provided in RCW 15.88.100(2), seven voting members of the commission constitute a quorum for the transaction of any business of the commission.

(4) Each voting member of the commission shall be a citizen and resident of this state and over the age of twenty-one years. Each voting member, except the member holding position eleven, must be or must have been engaged in that phase of the grower or wine producer industry that he or she is appointed to represent, and must during his or her term of office derive a substantial portion of income therefrom, or have a substantial investment in the growing of vinifera grapes or the production of wine from vinifera grapes as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the growing of vinifera grapes or wine production from vinifera grapes; or the manager or executive officer of such a corporation. These qualifications apply throughout each member's term of office. [1988 c 254 § 12; 1987 c 452 § 3.]

15.88.040 Designation of commission members—Terms. The appointive voting positions on the commission shall be designated as follows: The wine producers shall be designated positions one, two, three, four, and five; the growers shall be designated positions six, seven, eight, nine, and ten; and the wine wholesaler shall be position eleven. The nonvoting industry member shall be designated position number twelve. The member designated as filling position one shall be a person producing over one million gallons of wine annually. The member designated as position one shall be the sole representative, directly or indirectly, of the producer eligible to hold position one and in no event shall that producer directly or indirectly control more than fifty percent of the votes of the commission.

Except as provided in RCW 15.88.100(2), the regular terms of office shall be three years from the date of appointment and until their successors are appointed. However, the first terms of the members appointed upon July 1, 1987, shall be as follows: Positions one, six, and eleven shall terminate July 1, 1990; positions two, four, seven, and nine shall terminate July 1, 1989; and positions three, five, eight, and ten shall terminate July 1, 1988. The term of the initial nonvoting industry member shall terminate July 1, 1990. [1988 c 254 § 13; 1987 c 452 § 4.]

15.88.050 Appointment of members. The director shall appoint the members of the commission. In making such appointments of the voting members, the director shall take into consideration recommendations made by the growers' association and the wine institute as the persons recommended for appointment as members of the commission. In appointing persons to the commission, the director shall seek to ensure as nearly as possible a balanced representation on the commission which would reflect the composition of the growers and wine producers throughout the state as to number of acres cultivated and amount of wine produced.

The appointment shall be carried out immediately subsequent to July 1, 1987, and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission under RCW 15.88.040.

In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of the position shall immediately be filled by appointment by the director.

Each member of the commission shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1987 c 452 § 5.]

15.88.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other members of the commission. [1987 c 452 § 6.]

15.88.070 Commission powers and duties. The powers and duties of the commission include:

(1) To elect a chairman and such officers as the commission deems advisable. The officers shall include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its own governance, which shall provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To do all things reasonably necessary to effect the purposes of this chapter. However, the commission shall have no legislative power;

(3) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(4) To receive donations of wine from wineries for promotional purposes;

(5) To engage directly or indirectly in the promotion of Washington wine, including without limitation the acquisition in any lawful manner and the dissemination without charge of wine, which dissemination shall not be deemed a sale for any purpose and in which dissemination the commission shall not be deemed a wine producer, supplier, or manufacturer of any kind or the clerk, servant, or agent of a producer, supplier, or manufacturer of any kind. Such dissemination shall be for agricultural development or trade promotion, which may include promotional hosting and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of wine, or of research related to such marketing, advertising, or sale;

(6) To acquire and transfer personal and real property, establish offices, incur expense, enter into contracts (including contracts for creation and printing of promotional literature, which contracts shall not be subject to chapter 43.78 RCW, but which shall be cancelable by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries). The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(7) To maintain such account or accounts with one or more qualified public depositaries as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(8) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(9) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(10) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission or other entity for the purpose of promoting the general welfare of the vinifera grape industry and particularly for the purpose of assisting in the sale and distribution of Washington wine in domestic and foreign commerce, expending moneys as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington wine in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds; and

(11) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter. [1987 c 452 § 7.]

15.88.080 Research, promotional, and educational campaign. The commission shall create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account the information adduced thereby in the discharge of its duties under this chapter. [1987 c 452 § 8.]

15.88.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign such goals as will serve the needs of producers, which may include, without limitation, efforts to:

(1) Establish Washington wine as a major factor in markets everywhere;

(2) Promote Washington wineries as tourist attractions;

(3) Encourage favorable reporting of Washington wine and wineries in the press throughout the world;

(4) Establish the state in markets everywhere as a major source of premium wine;

(5) Encourage favorable legislative and regulatory treatment of Washington wine in markets everywhere;

(6) Foster economic conditions favorable to investment in the production of vinifera grapes and Washington wine;

(7) Advance knowledge and practice of production of wine grapes in this state;

(8) Discover and develop new and improved vines for the reliable and economical production of wine grapes in the state; and

(9) Advance knowledge and practice of the processing of wine grapes in the state. [1987 c 452 § 9.]

15.88.100 Commission members' votes weighted—Composition of commission if assessment not effective July 1, 1989—Votes. (1) Except as provided in subsections (2) and (3) of this section, the vote of each of the voting members of the commission shall be weighted as provided by this subsection for the transaction of any of the business of the commission. The total voting strength of the entire voting membership of the commission shall be eleven votes. The vote of position one shall be equal to the lesser of the following: Five and one-half votes; or eleven votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the commission shall be divided equally among the remaining members of the commission.

(2) In the event the assessment described in RCW 66.24.215(1)(b) is not effective on July 1, 1989, the positions designated for growers cease to exist. In such an event, the commission shall be composed of six voting members and two nonvoting members. The nonvoting industry member shall be position seven. Four voting members of the commission constitute a quorum for the modified commission. Of the six votes of the entire voting membership of the modified commission, the vote of position one shall be the lesser of the following: Three votes; or six votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the

commission shall be divided equally among the remaining members of the commission.

(3) In the event that the percentage of wine produced by the producer represented by position one falls below twenty-five percent of the wine produced in this state, the weighted voting mechanism provided for in subsections (1) and (2) of this section shall cease to be effective. In that case, the voting shall be based on one vote per position. [1988 c 254 § 14; 1987 c 452 § 10.]

Effective date—1988 c 254 § 14: "Section 14 of this act shall take effect July 1, 1989." [1988 c 254 § 15.] This applies to the 1988 c 254 amendment to RCW 15.88.100.

15.88.110 Assessments on wine producers and growers to fund commission. See RCW 66.24.215.

15.88.120 List of growers of vinifera grapes—Reporting system. (1) The commission shall cause a list to be prepared of all Washington growers from any information available from the department, growers' association, or wine producers. This list shall contain the names and addresses of all persons who grow vinifera grapes for sale or use by wine producers within this state and the amount (by tonnage) of vinifera grapes produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up to date in accordance with evidence and information available to the commission on or before December 31st of each year. For all purposes of giving notice and holding referendums, the list on hand, corrected up to the day next preceding the date for issuing notices or ballots as the case may be, is, for purposes of this chapter, deemed to be the list of all growers entitled to notice or to assent or dissent or to vote.

(2) The commission shall develop a reporting system to document that the vinifera grape growers in this state are reporting quantities of vinifera grapes grown and subject to the assessment as provided in RCW 15.88.130. [1988 c 257 § 1.]

15.88.130 Annual assessment on harvested vinifera grapes—Approval by referendum—Rules. (1) Pursuant to approval by referendum in accordance with RCW 15.88.140, commencing on July 1, 1989, there shall be levied, and the commission shall collect, upon all vinifera grapes grown within this state an annual assessment of three dollars per ton of vinifera grapes harvested to be paid by the grower of the grapes.

(2) The commission shall recommend rules to the director prescribing the time, place, and method for payment and collection of this assessment. For such purpose, the commission may recommend that the director, by rule, require the wine producers or handlers within this state to collect the grower assessments from growers whose vinifera grapes they purchase or accept delivery and remit the assessments to the commission, and provide for collecting assessments from growers who ship directly out of state.

(3) After considering any recommendations made under subsection (2) of this section, the director shall adopt rules, in accordance with chapter 34.05 RCW, prescribing the time, place, and method for the payment and collection of the assessment levied under this section and approved under RCW 15.88.140. [1988 c 257 § 2.]

15.88.140 Referendum determining grower participation—Effect. (1) For purposes of determining grower participation in the commission and assessment under RCW 15.88.130, the director shall conduct a referendum among all vinifera grape growers within the state. The requirements of assent or approval of the referendum will be held to be complied with if: (a) At least fifty-one percent by numbers of growers replying in the referendum vote affirmatively or at least fifty-one percent by acreage of those growers replying in the referendum vote affirmatively; and (b) thirty percent of all vinifera grape growers and thirty percent by acreage have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted on or before September 15, 1988.

(2) If the director determines that the requisite assent has been given, the director shall direct the commission to put into force the assessment in RCW 15.88.130.

(3) If the director determines that the requisite assent has not been given, the director shall direct the commission not to levy the assessment provided in RCW 15.88.130. If the requisite assent has not been given, the commission shall not continue to specifically foster the interests of vinifera grape growers. [1988 c 257 § 3.]

15.88.150 Deposit of moneys. The commission shall deposit moneys collected under RCW 15.88.130 in a separate account in the name of the commission in any bank that is a state depositary. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. None of the provisions of RCW 43.01.050 apply to this account or to the moneys received, collected, or expended as provided in RCW 15.88.120 through 15.88.160. [1988 c 257 § 4.]

15.88.160 Assessment constitutes debt—Penalty for nonpayment—Civil action. A due and payable assessment levied in such specified amount as determined by the commission under RCW 15.88.130 constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a person fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay any such due and payable assessment or other such sum, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable. [1988 c 257 § 5.]

15.88.900 Construction—1987 c 452. This act shall be liberally construed to effectuate its purposes. [1987 c 452 § 19.]

Reviser's note: For codification of "this act" [1987 c 452], see Codification Tables, Volume 0.

15.88.901 Effective dates—1987 c 452. (1) Sections 1 through 9 and 11 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987.

(2) Section 10 of this act shall take effect July 1, 1989. [1987 c 452 § 21.]

15.88.902 Severability—1987 c 452. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 452 § 20.]

Chapter 15.90
WILD MUSHROOM HARVESTING AND PROCESSING

Sections

15.90.010 Definitions. (Effective until June 30, 1994.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of agriculture.

(2) "Wild mushroom" means a mushroom that is not cultivated or propagated by artificial means.

(3) "Mushroom buyer" means a person who buys wild mushrooms from a mushroom harvester for eventual resale.

(4) "Mushroom harvester" means a person who picks wild mushrooms for sale or who picks wild mushrooms as an employee of a mushroom buyer or dealer.

(5) "Mushroom dealer" means a person, other than a mushroom buyer, who purchases and handles wild mushrooms in any manner whatsoever for eventual resale, either wholesale or retail. [1990 c 20 § 1; 1988 c 230 § 1.]

15.90.020 Mushroom buyer or dealer license—Generally. (Effective until June 30, 1994.) (1) A person may not act as a mushroom buyer or mushroom dealer without an annual license. Any person applying for such a license shall file an application on a form prescribed by the department, and accompanied by the following license fee:

(a) Mushroom buyer, seventy-five dollars;

(b) Mushroom dealer, three hundred seventy-five dollars.

(2) The mushroom buyer or mushroom dealer shall display the license in a manner visible to the public. [1990 c 20 § 2; 1988 c 230 § 2.]

15.90.030 Mushroom buyers—Disclosure. (Effective until June 30, 1994.) (1) A mushroom buyer who obtains wild mushrooms shall complete a form prescribed by the department that includes the following:

(a) The site at which the mushrooms were purchased by the buyer;

(b) The amount, by weight, of each species of mushrooms obtained;

(c) The approximate location of the harvest site;

(d) The date that the mushrooms were harvested;

(e) The price paid to the harvester;

(f) The name, address, and license number of the mushroom dealer to whom the mushrooms are sold;

(g) Any additional information that the department, by rule, may require.

(2) Forms completed under this section shall be mailed or delivered to the department within fifteen days after the end of the month in which the mushrooms were delivered to the dealer.

(3) Mushroom dealers shall comply with the requirements of this section when obtaining wild mushrooms from any source other than a licensed mushroom buyer. [1990 c 20 § 3; 1988 c 230 § 3.]

15.90.040 Mushroom dealers—Disclosure—Department harvest reporting. (Effective until June 30, 1994.) (1) Mushroom dealers shall annually, by December 31, complete and mail or deliver to the department a form prescribed by the department that includes for each variety of mushrooms:

(a) The quantity by weight sold within Washington, within the United States outside Washington, and to individual foreign countries;

(b) Any additional information that the department, by rule, may require.

(2) The department shall publish harvest totals in conjunction with United States department of agriculture crop reporting statistics as well as a compilation of the information received under subsection (1)(a) of this section. [1990 c 20 § 4; 1988 c 230 § 4.]

15.90.050 Recreational mushroom harvesters and mycological societies. (Effective until June 30, 1994.) The department shall encourage voluntary reporting of the information prescribed under RCW 15.90.030(1) by recreational mushroom harvesters and mycological societies. [1988 c 230 § 5.]

15.90.060 Civil infractions. (Effective until June 30, 1994.) The department is authorized to issue and enforce civil infractions in the manner prescribed under chapter 7.80 RCW. Violations of this chapter or any rule adopted under this chapter constitute a class I civil infraction under chapter 7.80 RCW. [1988 c 230 § 6.]

15.90.070 Rules. (Effective until June 30, 1994.) The department may adopt rules for the administration of this chapter. [1988 c 230 § 7.]

15.90.900 Expiration of chapter. (Effective until June 30, 1994.) Chapter 15.90 RCW shall expire June 30, 1994. [1988 c 230 § 9.]

15.90.901 Effective date—1988 c 230. (Effective until June 30, 1994.) Sections 1 through 9 of this act shall take effect January 1, 1989. The department of agriculture may immediately take such steps as are necessary to ensure that this act is implemented on that date. [1988 c 230 § 10.]

Chapter 15.92
CENTER FOR SUSTAINING AGRICULTURE AND NATURAL RESOURCES

Sections

15.92.005 Finding. The legislature finds that public concerns are increasing about the need for significant efforts to develop sustainable systems in agriculture. The sustainable systems would address many anxieties, including the erosion of agricultural lands, the protection and wise utilization of natural resources, and the safety of food production. Consumers have demonstrated their apprehension in the marketplace by refusing to purchase products whose safety is suspect and consumer confidence is essential for a viable agriculture in Washington. Examples of surface and ground water contamination by pesticides and chemical fertilizers raise concerns about deterioration of environmental quality. Reducing soil erosion would maintain water quality and protect the long-term viability of the soil for agricultural productivity. Both farmers and farm labor are apprehensive about the effects of pesticides on their health and personal safety. Development of sustainable farming systems would strengthen the economic viability of Washington's agricultural production industry.

Public anxieties over the use of chemicals in agriculture have resulted in congress amending the federal insecticide, fungicide and rodenticide act which requires all pesticides and their uses registered before November 1984 to be reregistered, complying with present standards, by the end of 1997. The legislature finds that the pesticide reregistration process and approval requirements could reduce the availability of chemical pesticides for use on minor crops in Washington and may jeopardize the farmers' ability to grow these crops in Washington.

The legislature recognizes that Washington State University supports research and extension programs that can lead to reductions in pesticide use where viable alternatives are both environmentally and economically sound. Yet, the legislature finds that a focused and coordinated program is needed to develop possible alternatives, increase public confidence in the safety of the food system, and educate farmers and natural resource managers on land stewardship.

The legislature further finds that growers, processors, and agribusiness depend upon pesticide laboratories associated with manufacturers, regional universities, state departments of agriculture, and the United States department of agriculture to provide residue data for registering essential pesticides. The registration of uses for minor crops, which include vegetables, fruits, nuts, berries, nursery and greenhouse crops, and reregistration of needed chemicals, are activities of particular concern to ensure crop production. Furthermore, public demands for improved information and education on pesticides and risk assessment efforts justify these efforts.

The legislature further finds that multiple alternatives are needed for pest control, including programs for integrated pest management, genetic resistance to pests, biological control, cultural practices, and the use of appropriate approved chemicals. [1991 c 341 § 1.]

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

(1) "Center" means the center for sustaining agriculture and natural resources established at Washington State University.

(2) "Laboratory" means the food and environmental quality laboratory established at Washington State University at Tri-Cities.

(3) "Integrated pest management" is a strategy that uses various combinations of pest control methods, biological, cultural, and chemical, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(4) "IR-4 program" means interregional research project number four, clearances of chemicals and biologics for minor or special uses, established in 1963 by the cooperative state research service of the United States department of agriculture, the coordinated national program involving land-grant universities and the United States department of agriculture to provide data required for the registration of pesticides needed for the production of minor crops.

(5) "Natural resources" means soil, water, air, forests, wetlands, wildlands, and wildlife.

(6) "Pesticide" means chemical or biologic used to control pests such as insect, rodent, nematode, snail, slug, weed, virus, or any organism the director of agriculture may declare to be a pest.

(7) "Registration" means use of a pesticide approved by the state department of agriculture.

(8) "Sustainable agriculture" means a systems approach to farming, ranching, and natural resource production that builds on and supports the physical, biological, and ecological resource base upon which agriculture depends. The goals of sustainable agriculture are to provide human food and fiber needs in an economically viable manner for the agriculture industry and in a manner which protects the environment and contributes to the overall safety and quality of life. [1991 c 341 § 2.]

15.92.020 Center established. A center for sustaining agriculture and natural resources is established at Washington State University. The center shall provide state-wide leadership in research, extension, and resident instruction programs to sustain agriculture and natural resources. [1991 c 341 § 3.]

15.92.030 Primary activities—Cooperative with University of Washington. The center is to work cooperatively with the University of Washington to maximize the use of financial resources in addressing forestry issues. The center's primary activities include but are not limited to:

(1) Research programs which focus on developing possible alternative production and marketing systems through:

(a) Integrated pest management;

(b) Biological pest control;

(c) Plant and animal breeding;

(d) Conservation strategies; and

(e) Understanding the ecological basis of nutrient management;

(2) Extension programs which focus on:

(a) On-farm demonstrations and evaluation of alternative production practices;

(b) Information dissemination, and education concerning sustainable agriculture and natural resource systems; and

(c) Communication and training on sustainable agriculture strategies for consumers, producers, and farm and conservation-related organizations;

(3) On-farm testing and research to calculate and demonstrate costs and benefits, including economic and environmental benefits and trade-offs, inherent in farming systems and technologies;

(4) Crop rotation and other natural resource processes such as pest-predator interaction to mitigate weed, disease, and insect problems, thereby reducing soil erosion and environmental impacts;

(5) Management systems to improve nutrient uptake, health, and resistance to diseases and pests by incorporating the genetic and biological potential of plants and animals into production practices;

(6) Soil management, including conservation tillage and other practices to minimize soil loss and maintain soil productivity; and

(7) Animal production systems emphasizing preventive disease practices and mitigation of environmental pollution. [1991 c 341 § 4.]

15.92.040 Administrator. The center is managed by an administrator. The administrator shall hold a joint appointment as an assistant director in the Washington State University agricultural research center and cooperative extension.

(1) A committee shall advise the administrator. The dean of the Washington State University college of agriculture and home economics shall make appointments to the advisory committee so the committee is representative of affected groups, such as the Washington department of social and health services, the Washington department of ecology, the Washington department of agriculture, the chemical and fertilizer industry, food processors, marketing groups, consumer groups, environmental groups, farm labor, and natural resource and agricultural organizations.

(2) Each appointed member shall serve a term of three years, and one-third are appointed every year. The entire committee is appointed the first year: One-third for a term of one year, one-third for a term of two years, and one-third for a term of three years. A member shall continue to serve until a successor is appointed. Vacancies are filled by appointment for the unexpired term. The members of the advisory committee shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the committee as provided in RCW 43.03.050 and 43.03.060.

(3) It is the responsibility of the administrator, in consultation with the advisory committee, to:

(a) Recommend research and extension priorities for the center;

(b) Conduct a competitive grants process to solicit, review, and prioritize research and extension proposals; and

(c) Advise Washington State University on the progress of the development and implementation of research, teaching, and extension programs that sustain agriculture and natural resources of Washington. [1991 c 341 § 5.]

15.92.050 Food and environmental quality laboratory. A food and environmental quality laboratory operated by Washington State University is established in the Tri-Cities area to conduct pesticide residue studies concerning fresh and processed foods, in the environment, and for human and animal safety. The laboratory shall cooperate with public and private laboratories in Washington, Idaho, and Oregon. [1991 c 341 § 6.]

15.92.060 Laboratory responsibilities. The responsibilities of the laboratory shall include:

(1) Evaluating regional requirements for minor crop registration through the federal IR-4 program;

(2) Conducting studies on the fate of pesticides on crops and in the environment, including soil, air, and water;

(3) Improving pesticide information and education programs; and

(4) Assisting federal and state agencies with questions regarding registration of pesticides which are deemed critical to crop production, consistent with priorities established in RCW 15.92.070; and

(5) Assisting in the registration of biopesticides, pheromones, and other alternative chemical and biological methods. [1991 c 341 § 7.]

15.92.070 Board to advise laboratory. The laboratory is advised by a board appointed by the dean of the Washington State University college of agriculture and home economics. The dean shall cooperate with appropriate officials in Washington, Idaho, and Oregon in selecting board members.

(1) The board shall consist of one representative from each of the following interests: A human toxicologist or a health professional knowledgeable in worker exposure to pesticides, the Washington State University vice-provost for research or research administrator, representatives from the state department of agriculture, the department of ecology,

the department of health, the department of labor and industry [industries], privately owned Washington pesticide analytical laboratories, federal regional pesticide laboratories, an Idaho and Oregon laboratory, whether state, university, or private, a chemical and fertilizer industry representative, farm organizations, food processors, marketers, farm labor, environmental organizations, and consumers. Each board member shall serve a three-year term. The members of the board shall serve without compensation but shall be reimbursed for travel expenses incurred while engaged in the business of the board as provided in RCW 43.03.050 and 43.03.060.

(2) The board is in liaison with the pesticide advisory board and the pesticide incident reporting and tracking panel and shall review the chemicals investigated by the laboratory according to the following criteria:

(a) Chemical uses for which a data base exists on environmental fate and acute toxicology, and that appear safer environmentally than pesticides available on the market;

(b) Chemical uses not currently under evaluation by public laboratories in Idaho or Oregon for use on Washington crops;

(c) Chemicals that have lost or may lose their registration and that no reasonably viable alternatives for Washington crops are known; and

(d) Other chemicals vital to Washington agriculture.

(3) The laboratory shall conduct research activities using approved good laboratory practices, namely procedures and recordkeeping required of the national IR-4 minor use pesticide registration program.

(4) The laboratory shall coordinate activities with the national IR-4 program. [1991 c 341 § 8.]

15.92.080 Annual report—Acceptable risk of human and environmental exposure. The center for sustaining agriculture and natural resources at Washington State University shall prepare and present an annual report to the appropriate legislative committees. The report shall include the center's priorities to find alternatives to the use of agricultural chemicals that pose human and environmental risks. The first report, due no later than November 1, 1992, shall use federal criteria of acceptable risk of human and environmental exposure for establishing such priorities and for conducting responsive research and education programs. For each subsequent year, the report shall detail the center's progress toward meeting the goals identified in the center's plan. [1991 c 341 § 9.]

Chapter 15.98
CONSTRUCTION

Sections

15.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 11 § 15.98.010.]

15.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 11 § 15.98.020.]

15.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 11 § 15.98.030.]

15.98.040 Repeals and saving. See 1961 c 11 § 15.98.040.

15.98.050 Emergency—1961 c 11. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 11 § 15.98.050.]

Title 16
ANIMALS, ESTRAYS, BRANDS AND FENCES

Chapters

Agister and trainer liens: Chapter 60.56 RCW.

Carrier or racing pigeons—Injury to: RCW 9.61.190 and 9.61.200.

Control of predatory birds injurious to agriculture: RCW 15.04.110, 15.04.120.

"Coyote getters" may be used to control coyotes: RCW 9.41.185.

Director of agriculture: Chapter 43.23 RCW.

Dog license tax, counties: Chapter 36.49 RCW.

Grazing ranges: Chapter 79.28 RCW, RCW 79.01.244, 79.01.296.

Harming a police dog: RCW 9A.76.200.

Killing of person by vicious animal: RCW 9A.32.070.

Larcenous appropriation of livestock: Chapter 9A.56 RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.

Race horses: Chapter 67.16 RCW.

Stealing horses or cattle as larceny: Chapter 9A.56 RCW.

Chapter 16.04
TRESPASS OF ANIMALS—GENERAL

Sections

Dangerous dogs: RCW 16.08.070 through 16.08.100.

Diseased animals, sale, etc.: RCW 9.08.020.

Disturbance on public highway: RCW 9A.84.030.

Fences: Chapter 16.60 RCW.

16.04.005 Liability for damages—Restraint—Notice. See RCW 16.60.015.

16.04.010 Trespassing animals—Restraint—Damages and costs. Any person suffering damage done by any horses, mules, donkeys, cattle, goats, sheep, swine, or any such animals, which shall either trespass upon any land enclosed by lawful fence as provided in chapter 16.60 RCW or trespass while running at large in violation of chapter 16.24 RCW may retain and keep in custody such offending animals until the owner or person having possession of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [1989 c 286 § 1; 1925 ex.s. c 56 § 1; 1893 c 31 § 1; RRS § 3090.]

Severability—1989 c 286: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 286 § 26.]

Damages to stock on unfenced railroad: RCW 81.52.050 through 81.52.070.

Pleading answer in action to recover property distrained: RCW 4.36.140.

16.04.015 Damages, liability. Whenever any animals trespass as provided in RCW 16.04.010, the owner or person having possession of such animal shall be liable for all damages the owner or occupant may sustain by reason of such trespass. [1989 c 286 § 2.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.04.020 Notice of restraint—Owner known. Whenever any animals are restrained as provided in RCW 16.04.010, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: PROVIDED, He knows to whom such animals belong. [1893 c 31 § 2; RRS § 3091. FORMER PART OF SECTION: 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092, now codified as RCW 16.04.025.]

16.04.025 Owner of animals unknown—Procedure. If the owner or the person having in charge or possession

such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the notice required in RCW 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter 16.24 RCW. Such removal shall not prejudice the property owner's ability to recover damages through civil suit. [1989 c 286 § 21; 1985 c 415 § 24; 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092. Formerly RCW 16.04.020, part.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.04.030 Actions for damages. If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, and the costs, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, or in case of horses, mares, mules and asses, within twenty-four hours from the time such notice was posted, if served by posting the same, and in case of cattle, goats, sheep and swine within ten days from the time of such posting, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as modified in RCW 16.04.010 through 16.04.070. If such suit is commenced in superior court the summons shall require the defendant to appear within five days from the date of service of such summons, if served personally. [1925 ex.s. c 56 § 3; 1893 c 31 § 4; RRS § 3093.]

16.04.040 Jurisdiction—Appeal. District judges shall have exclusive jurisdiction of all actions and proceedings under RCW 16.04.010 through 16.04.070 when the damages claimed do not exceed one hundred dollars: PROVIDED, HOWEVER, That any party considering himself or herself aggrieved shall have the right of appeal to the superior court as in other cases. [1987 c 202 § 177; 1893 c 31 § 9; RRS § 3098.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.04.045 Continuance. If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in RCW 16.04.050 provided, if the proper defendant be unknown to plaintiff. [1893 c 31 § 6; RRS § 3095. Formerly RCW 16.04.050, part.]

16.04.050 Substituted service. If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publication, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a newspaper of general circulation in the area where the plaintiff resides less than ten days previous to the day of trial. [1985 c 469 § 8; 1893 c 31 § 7; RRS § 3096. FORMER PART OF SECTION: 1893 c 31 § 6; RRS § 3095, now codified as RCW 16.04.045.]

16.04.060 Sale—When costs may be charged to plaintiff. Upon the trial of an action as herein provided [RCW 16.04.010 through 16.04.070] the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: PROVIDED, That no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damage sustained by defendant. [1893 c 31 § 5; RRS § 3094.]

16.04.070 Surplus—Disposition. If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county. [1893 c 31 § 8; RRS § 3097.]

16.04.080 Stock on United States military reservation. It shall be unlawful for the owner of any livestock to allow such livestock to run at large or be upon any United States military reservation upon which field artillery firing or other target practice with military weapons is conducted. Any owner who permits livestock to run at large or be upon any such reservation shall do so at the risk of such owner and such owner shall have no claim for damages if such livestock is injured or destroyed while so running at large on such reservation: PROVIDED, HOWEVER, That the commanding officer of any such United States military reservation may issue permits for specific areas and for specific periods of time when firing will not be conducted thereon authorizing the owner of such livestock to permit the

same to run at large or be upon any such military reservation. [1937 c 101 § 1; RRS § 3068-1.]

Chapter 16.08
DOGS
(Formerly: Dangerous dogs)

Sections

Dogs pursuing deer or elk: RCW 77.16.110.

16.08.010 Liability for injury to stock by dogs. The owner or keeper of any dog shall be liable to the owner of any animal killed or injured by such dog for the amount of damages sustained and costs of collection, to be recovered in a civil action. [1985 c 415 § 14; 1929 c 198 § 5; RRS § 3106. Prior: 1919 c 6 § 5; RCS § 3106.]

16.08.020 Dogs injuring stock may be killed. It shall be lawful for any person who shall see any dog or dogs chasing, biting, injuring or killing any sheep, swine or other domestic animal, including poultry, belonging to such person, on any real property owned or leased by, or under the control of, such person, or on any public highway, to kill such dog or dogs, and it shall be the duty of the owner or keeper of any dog or dogs so found chasing, biting or injuring any domestic animal, including poultry, upon being notified of that fact by the owner of such domestic animals or poultry, to thereafter keep such dog or dogs in leash or confined upon the premises of the owner or keeper thereof, and in case any such owner or keeper of a dog or dogs shall fail or neglect to comply with the provisions of this section, it shall be lawful for the owner of such domestic animals or poultry to kill such dog or dogs found running at large. [1929 c 198 § 6; RRS § 3107. Prior: 1919 c 6 § 6; 1917 c 161 § 6; RCS § 3107.]

16.08.030 Marauding dog—Duty of owner to kill. It shall be the duty of any person owning or keeping any dog or dogs which shall be found killing any domestic animal to kill such dog or dogs within forty-eight hours after being notified of that fact, and any person failing or neglecting to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and it shall be the duty of the sheriff or any deputy sheriff to kill any dog found running at large (after the first day of August of any year and before the first day of March in the following year) without a metal identification tag. [1929 c 198 § 7; RRS § 3108. Prior: 1919 c 6 § 7; 1917 c 161 § 7; RCS § 3108.]

16.08.040 Dog bites—Liability. The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness. [1941 c 77 § 1; Rem. Supp. 1941 § 3109-1.]

16.08.050 Entrance on private property, when lawful. A person is lawfully upon the private property of such owner within the meaning of RCW 16.08.040 when such person is upon the property of the owner with the express or implied consent of the owner: PROVIDED, That said consent shall not be presumed when the property of the owner is fenced or reasonably posted. [1979 c 148 § 1; 1941 c 77 § 2; Rem. Supp. 1941 § 3109-2.]

16.08.060 Provocation as a defense. Proof of provocation of the attack by the injured person shall be a complete defense to an action for damages. [1941 c 77 § 3; Rem. Supp. 1941 § 3109-3.]

16.08.070 Dangerous dogs—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 16.08.070 through 16.08.100.

(1) "Potentially dangerous dog" means any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

(2) "Dangerous dog" means any dog that according to the records of the appropriate authority, (a) has inflicted severe injury on a human being without provocation on public or private property, (b) has killed a domestic animal without provocation while off the owner's property, or (c) has been previously found to be potentially dangerous, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(5) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforce-

ment of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal. [1987 c 94 § 1.]

Severability—1987 c 94: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 94 § 6.]

16.08.080 Dangerous dogs—Certificate of registration required—Prerequisites. (1) It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration issued under this section. This section and RCW 16.08.090 and 16.08.100 shall not apply to police dogs as defined in RCW 4.24.410.

(2) The animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least fifty thousand dollars, payable to any person injured by the vicious dog; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

(3)(a) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

(b) If an owner has the dangerous dog in an incorporated or unincorporated area served only by a county animal control authority, the owner shall obtain a certificate of registration from the county authority;

(c) If an owner has the dangerous dog in an incorporated or unincorporated area that is not served by an animal control authority, the owner shall obtain a certificate of registration from the office of the local sheriff.

(4) Cities and counties may charge an annual fee, in addition to regular dog licensing fees, to register dangerous dogs. [1989 c 26 § 3; 1987 c 94 § 2.]

Severability—1987 c 94: See note following RCW 16.08.070.

16.08.090 Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous. (1) It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

(2) Potentially dangerous dogs shall be regulated only by local, municipal, and county ordinances. Nothing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs.

(3) Dogs shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a wilful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime. [1987 c 94 § 3.]

Severability—1987 c 94: See note following RCW 16.08.070.

16.08.100 Dangerous dogs—Confiscation—Conditions—Penalties for owners of dogs that attack—Dog fights, penalty. (1) Any dangerous dog shall be immediately confiscated by an animal control authority if the: (a) Dog is not validly registered under RCW 16.08.080; (b) owner does not secure the liability insurance coverage required under RCW 16.08.080; (c) dog is not maintained in the proper enclosure; (d) dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person. In addition, the owner shall be guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021.

(2) If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony, punishable in accordance with RCW 9A.20.021. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether the dog has previously been declared potentially dangerous or dangerous, shall be guilty of a class C felony punishable in accordance with RCW 9A.20.021. In addition, the dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(4) Any person entering a dog in a dog fight is guilty of a class C felony punishable in accordance with RCW 9A.20.021. [1987 c 94 § 4.]

Severability—1987 c 94: See note following RCW 16.08.070.

Chapter 16.10
DOGS—LICENSING—DOG CONTROL ZONES

Sections

Pet animals—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

16.10.010 Purpose. The purpose of this chapter is to provide for the licensing of dogs within specific areas of particular counties. [1969 c 72 § 1.]

16.10.020 Dog control zones—Determination of need by county commissioners. County commissioners may, if the situation so requires, establish dog control zones within high density population districts, or other specified areas, of a county outside the corporate limits of any city, and outside the corporate limits of any organized township. For such zones, licensing regulations may be established which shall not necessarily be operative in sparsely settled rural districts, or in other portions of the county where they may not be needed. In determining the need for such zones, and in drawing their boundaries, county commissioners shall take into consideration the following factors:

(1) The density of population in the area proposed to be zoned;

(2) Zoning regulations, if any, in force in the area proposed to be zoned;

(3) The public health, safety and welfare within the area proposed to be zoned.

If the commissioners shall find that the area proposed to be zoned is heavily populated, or that the purposes for which the land is being used therein require that dogs be controlled, or that the health, safety, and welfare of the people in the area require such control, they may propose the establishment of a dog control zone. [1969 c 72 § 2.]

16.10.030 Dog control zones—Public hearing, publication of notice. In determining whether a dog control zone should be established, the county commissioners shall call a public hearing, notice of which shall be published once a week for each of four consecutive weeks prior thereto in a newspaper of general circulation within the proposed zone. At such a hearing, proponents and opponents of the proposed dog control zone may appear and present their views. The final decision of the commissioners with respect to the establishment of such a zone shall not be made until the conclusion of the hearing. [1969 c 72 § 3.]

16.10.040 Dog control zones—Regulations—License fees, collection, disposition. The county commissioners shall by ordinance promulgate the regulations to be enforced within a dog control zone. These shall include provisions for the control of unlicensed dogs and the establishment of license fees. The county sheriff and/or other agencies designated by the county commissioners shall be responsible for the enforcement of the act, including the collection of license fees. Fees collected shall be transferred to the current expense fund of each county. [1969 c 72 § 4.]

Chapter 16.24
STOCK RESTRICTED AREAS

Sections

16.24.010 Restricted areas—Range areas. The county legislative authority of any county of this state shall have the power to designate by an order made and published, as provided in RCW 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large. No territory so designated shall be less than two square miles in area. RCW 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit cattle, horses, mules, or donkeys to run at large: PROVIDED, That the county legislative authority may designate areas where it shall be unlawful to permit any livestock other than cattle to run at large. [1989 c 286 § 4; 1937 c 40 § 1; 1911 c 25 § 1; RRS § 3068. Prior: 1907 c 230 § 1; 1905 c 91 § 1; R & B § 3166.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.020 Hearing—Notice. *Within sixty days after the taking effect of RCW 16.24.010 through 16.24.065, the county legislative authority of each of the several counties of the state may make an order fixing a time and place when a hearing will be had, notice of which shall be published at least once each week for two successive weeks in some newspaper having a general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the establishment of range areas or stock restricted areas as defined in RCW 16.24.010 through 16.24.065. [1989 c 286 § 5; 1937 c 40 § 2; 1923 c 33 § 1; 1911 c 25 § 2; RRS § 3069.]

*Reviser's note: RCW 16.24.010 through 16.24.065 took effect March 1, 1937.

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.030 Order establishing area—Publication. Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the stock restricted areas within the county where livestock may not run at large, which order shall be entered upon the records of the county and published in a newspaper having general circulation in such county at least once each week for four successive weeks. [1989 c 286 § 6; 1937 c 40 § 3; 1923 c 33 § 2; 1911 c 25 § 3; RRS § 3070.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.040 Penalty. Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall have been published or posted as provided in RCW 16.24.030 or, violating any provision of this chapter, shall be guilty of a misdemeanor. [1975 c 38 § 1; 1911 c 25 § 4; RRS § 3071.]

16.24.050 Change of boundaries. When the county legislative authority of any county deem[s] it advisable to change the boundary or boundaries of any stock restricted area, a hearing shall be held in the same manner as provided in RCW 16.24.020. If the county legislative authority decides to change the boundary or boundaries of any stock restricted area or areas, it shall within thirty days after the conclusion of such hearing make an order describing said change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in such county once each week for four successive weeks. [1989 c 286 § 7; 1937 c 40 § 4; 1923 c 93 § 1; RRS § 3070-1.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.060 Road signs in range areas. At the point where a public road enters a range area, and at such other points thereon within such area as the county legislative authority shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK." [1989 c 286 § 8; 1937 c 40 § 5; RRS § 3070-2.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.065 Stock at large in restricted areas—Running at large on state or federal land. (1) No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area or to wander or stray upon the right-of-way of any public highway lying within a stock restricted area when not in the charge of some person.

(2) Livestock may run at large upon lands belonging to the state of Washington or the United States only when the owner of the livestock has been granted grazing privileges in writing. [1989 c 286 § 9; 1985 c 415 § 20; 1937 c 40 § 6; RRS § 3070-3. Formerly RCW 16.24.070, part.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.070 Stock on highway right-of-way—Limitations. It shall be unlawful for any person to herd or move any livestock over, along or across the right-of-way of any public highway, or portion thereof, within any stock restricted area, without having in attendance a sufficient number of persons to control the movement of such livestock and to warn or otherwise protect vehicles traveling upon such public highway from any danger by reason of such livestock being herded or moved thereon. [1989 c 286 § 10; 1937 c 189 § 127; RRS § 6360-127, part. Prior: 1927 c 309 § 41, part; RRS § 6362-41, part. FORMER PART OF SECTION: 1937 c 40 § 6; RRS § 3070-3, now codified as RCW 16.24.065. Formerly RCW 16.24.070 and 16.24.080.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.090 Animals at large—Limitations—Defense. Except as provided in chapter 16.24 RCW, a person who owns or has possession, charge, or control of horses, mules, donkeys, cattle, goats, sheep or swine shall not negligently allow them to run at large at any time or within any territory. It shall not be necessary for any person to fence against such animals, and it shall be no defense to any action or proceedings brought pursuant to this chapter or chapter 16.04 RCW that the party injured by or restraining such animals did not have his or her lands enclosed by a lawful fence: PROVIDED, That such animals may be driven upon the highways while in charge of sufficient attendants. [1989 c 286 § 14; 1911 c 25 § 5; RRS § 3072. Formerly RCW 16.12.010, part.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.100 Prosecution—Proof of ownership. In any prosecution under chapter 16.24 RCW proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal. [1989 c 286 § 3; 1895 c 124 § 2; RRS § 3086. Formerly RCW 16.16.020.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.110 Public nuisance—Impounding. Any horses, mules, donkeys, or cattle of any age running at large or trespassing in violation of chapter 16.24 RCW as now or hereafter amended, which are not restrained as provided by RCW 16.04.010, are declared to be a public nuisance. The sheriff of the county where found and the nearest brand inspector shall have authority to impound such animals which are not restrained as provided by RCW 16.04.010. [1989 c 286 § 11; 1985 c 415 § 16; 1979 c 154 § 6; 1975 1st ex.s. c 7 § 14; 1951 c 31 § 2. Formerly RCW 16.13.020.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.24.120 Impounding—Procedure. Upon taking possession of any livestock at large contrary to the provisions of *RCW 16.13.020, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the

director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof. [1989 c 286 § 12; 1979 c 154 § 7; 1975 1st ex.s. c 7 § 15; 1951 c 31 § 3. Formerly RCW 16.13.030.]

***Reviser's note:** RCW 16.13.020 was recodified as RCW 16.24.110 pursuant to 1989 c 286 § 18.

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.24.130 Impounding—Notice—Copy to owner. The brand inspector shall cause to be published once in a newspaper published in the county where the animal was found, a notice of the impounding.

The notice shall state:

(1) A description of the animal, including brand, tattoo or other identifying characteristics;

(2) When and where found;

(3) Where impounded; and

(4) That if unclaimed, the animal will be sold at a public livestock market sale, and the date of such sale: PROVIDED, That if no newspaper shall be published in such county, copies of the notice shall be posted at four commonly frequented places therein.

If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector, on or before the date of publication or posting, shall send a copy of the notice to the owner of record by registered mail. [1975 1st ex.s. c 7 § 16; 1951 c 31 § 4. Formerly RCW 16.13.040.]

16.24.140 Impounding—Owner to pay costs. Upon claiming any animal impounded under this chapter, the owner shall pay all costs of transportation, advertising, legal proceedings, and keep of the animal. [1989 c 286 § 13; 1951 c 31 § 5. Formerly RCW 16.13.050.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.150 Sale of impounded animal. If no person shall claim the animal within ten days after the date of publication or posting of the notice, it shall be sold at the next succeeding public livestock market sale to be held at the sales yard where impounded. [1975 1st ex.s. c 7 § 17; 1951 c 31 § 6. Formerly RCW 16.13.060.]

16.24.160 Conduct of sale—Disposition of proceeds. The proceeds of the sale of animals impounded under this chapter, after deducting the costs of sale, shall be impounded in the estray fund of the department of agriculture, and if no valid claim is made within one year from the date of sale, the director of the department of agriculture shall transfer the proceeds of sale to the brand fund of the department to be used for the enforcement of this chapter. [1985 c 415 § 17; 1951 c 31 § 7. Formerly RCW 16.13.070.]

16.24.170 Purchase of animal, restrictions. No law enforcement officer shall, directly or indirectly, purchase any animal sold under the provisions of this chapter, or any interest therein. [1951 c 31 § 8. Formerly RCW 16.13.080.]

16.24.180 Castration or gelding of stock at large. It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper. It shall be lawful for any person to take up or capture and geld, at the risk of the owner, between April 1 and September 30 of any year, any stud horse or jackass or any male mule above the age of eighteen months found running at large out of the enclosed grounds of the owner or keeper. If the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: PROVIDED, Such act of castration shall have been skillfully done by a person accustomed to doing the same: AND PROVIDED FURTHER, That if the person so taking up or capturing such animal, or causing it to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the reasonable costs of keeping of said animal, and take and safely keep said animal thereafter within his own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay a reasonable sum for such act of castration, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: AND PROVIDED FURTHER, That if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate the animal without giving any notice to the owner or keeper whatever. For purposes of this section, geld and castrate shall have the same meaning. [1989 c 286 § 15; 1965 c 66 § 4; 1890 p 453 § 1; RRS § 3081. Formerly RCW 16.20.010.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.190 Bull breed restrictions. It shall be unlawful for any person, firm, association or corporation to turn upon or allow to run at large on any range area in this state any bull other than a registered bull of a recognized beef breed. All persons running cattle in common on any range area may, however, agree to run any purebred or crossbred bull of any breed, registered or unregistered, as they may deem appropriate for their area. [1986 c 177 § 1; 1985 c 415 § 18; 1917 c 111 § 1; RRS § 3082. Formerly RCW 16.20.020.]

16.24.200 Bull ratio restrictions. Before any person, firm, association or corporation turns upon a range area in

this state any female cattle of breeding age of more than fifteen in number, they shall procure and turn with said female breeding cattle one registered bull of recognized beef breed for every forty females or fraction thereof of twenty-five or over. All persons running cattle in common on any range area may, however, agree to any other proportion of bulls to female cattle of breeding age as they may deem appropriate for their area. [1986 c 177 § 2; 1917 c 111 § 2; RRS § 3083. Formerly RCW 16.20.030.]

16.24.210 Bull breed and ratio restrictions not applicable to counties west of Cascades. RCW 16.24.190 and 16.24.200 shall not apply to counties lying west of the summit of the Cascade mountains. [1989 c 286 § 17; 1985 c 415 § 19. Formerly RCW 16.20.035.]

Severability—1989 c 286: See note following RCW 16.04.010.

16.24.220 Separating estrays from herd. It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large. [1989 c 286 § 16; 1987 c 202 § 181; 1969 ex.s. c 199 § 14; Code 1881 § 2537; RRS § 3050. Prior: 1869 pp 408, 409 §§ 1, 2. Formerly RCW 16.28.160.]

Severability—1989 c 286: See note following RCW 16.04.010.

Intent—1987 c 202: See note following RCW 2.04.190.

16.24.230 Moving another's livestock from range. No person shall remove any livestock belonging to another from the range on which they are permitted to run at large, without the prior consent of the owner thereof. The owner of any livestock may move his or her own livestock, together with such other livestock as cannot be separated from his or her own, to the nearest corral, or other facility in order to separate his or her own livestock, if the other livestock are returned to the same location from which they were moved within twenty-four hours. [1985 c 415 § 21; 1891 c 12 § 1; RRS § 3048. Formerly RCW 16.28.170, part. Formerly RCW 16.28.165.]

Chapter 16.36
DISEASES—QUARANTINE—GARBAGE FEEDING

Sections

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.36.005 Definitions. As used in this chapter:

"Director" means the director of agriculture of the state of Washington or his authorized representative.

"Department" means the department of agriculture of the state of Washington.

"Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

"Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals. [1987 c 163 § 1; 1953 c 17 § 1.]

16.36.010 "Quarantine" defined. The word "quarantine" as used in *this act shall mean the placing and restraining of any animal or animals by the owner or agents in charge thereof, either within a certain described and designated enclosure or area within this state, or the restraining of any such animal or animals from entering this state, as may be directed in writing by the director of agriculture, or his duly authorized representative. Any animal or animals so quarantined within the state shall at all times be kept separate and apart from other domestic animals and not allowed to have anything in common therewith. [1927 c 165 § 2; RRS § 3111. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

***Reviser's note:** "this act," chapter 165, Laws of 1927, as amended, has been codified within chapters 16.36, 16.40, and 16.44 RCW.

16.36.020 Powers of director. The director shall have general supervision of the prevention of the spread and the suppression of infectious, contagious, communicable and dangerous diseases affecting animals within, in transit through and being imported into the state. The director may establish and enforce quarantine of and against any and all domestic animals which are affected with any such disease or that may have been exposed to others thus affected, whether within or without the state, for such length of time as he deems necessary to determine whether any such animal is infected with any such disease. The director shall also enforce and administer the provisions of this chapter pertaining to garbage feeding and when garbage has been fed to swine, the director may require the disinfection of all

facilities, including yard, transportation and feeding facilities, used for keeping such swine.

The director shall also have the authority to regulate the sale, distribution, and use of veterinary biologics in the state and may adopt rules to restrict the sale, distribution, or use of any veterinary biologic in any manner the director determines to be necessary to protect the health and safety of the public and the state's animal population. [1987 c 163 § 2; 1979 c 154 § 8; 1953 c 17 § 2; 1947 c 172 § 1; 1933 c 177 § 1; 1927 c 165 § 1; formerly Rem. Supp. 1947 § 3110. Prior: 1915 c 100 § 5; 1901 c 112 § 2; 1895 c 167 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.030 Breaking quarantine—Penalty. It shall be unlawful for the owner or owners of any animal quarantined, or their agents or employees, to fail to place the quarantined animals within the certain described and designated enclosure or area within this state, to break such quarantine or to move, or allow to be moved, any such animal from within the quarantined area, or across the quarantined line, as established, or to sell, exchange or in any other way part with the products of such animals, without first obtaining a permit in writing from the director of agriculture, or his duly authorized representative. Any owner or owners of any quarantined animal or any agent of such owner or owners, who fails to comply with or violates any such quarantine or who negligently allows any such quarantined animal to escape from quarantine, and any other person who removes any quarantined animal from such quarantine shall be guilty of a gross misdemeanor. [1985 c 415 § 1; 1979 c 154 § 9; 1947 c 172 § 2; 1927 c 165 § 3; Rem. Supp. 1947 § 3112. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.040 Rules and regulations—Inspections and tests—Intercounty embargoes and quarantine. The director of agriculture shall have power to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting domestic animals in this state, and to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper governing the inspection and test of all animals within or about to be imported into this state, and to promulgate and enforce intercounty embargoes and quarantine to prevent the shipment, trailing, trucking, transporting or movement of bovine animals from any county that has not been declared modified accredited by the United States department of agriculture, animal and plant health inspection service, for tuberculosis and/or certified brucellosis-free, into a county which has been declared modified accredited by the United States department of agriculture, animal and plant health inspection service, for tuberculosis and/or certified brucellosis-free, unless such animals are accompanied by a negative certificate of tuberculin test made within sixty days and/or a negative brucellosis test made within the forty-five day period prior to the movement of such animal into such county, issued by a duly authorized veterinary inspector of the state department of agriculture, or of the United States department of agriculture, animal and plant health inspection service, or an accredited veterinarian authorized by permit issued by the director of agriculture to execute such certificate. [1979 c 154 § 10; 1947 c 172 § 3; 1927 c 165 § 4; Rem. Supp. 1947 § 3113. Prior: 1915 c 100 § 4; 1901 c 112 § 2; 1895 c 167 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.050 Importation—Health certificates—Permits—Exceptions. It shall be unlawful for any person, or any railroad or transportation company, or other common carrier, to bring into this state for any purpose any domestic animals without first having secured an official health certificate, certified by the state veterinarian of origin that such animals meet the health requirements promulgated by the director of agriculture of the state of Washington: PROVIDED, That this section shall not apply to domestic animals imported into this state for immediate slaughter, or domestic animals imported for the purpose of unloading for feed, rest, and water, for a period not in excess of twenty-eight hours except upon prior permit therefor secured from the director of agriculture. It shall be unlawful for any person to divert en route for other than to an approved, inspected stockyard for immediate slaughter or to sell for other than immediate slaughter or to fail to slaughter within fourteen days after arrival, any animal imported into this state for immediate slaughter. It shall be unlawful for any person, railroad, transportation company, or other common carrier, to keep any domestic animals which are unloaded for feed, rest and water in other than quarantined pens, or not to report any missing animals to the director of agriculture at the time the animals are reloaded. [1979 c 154 § 11; 1947 c 172 § 4; 1927 c 165 § 5; Rem. Supp. 1947 § 3114. Prior: 1915 c 100 § 7; 1905 c 169 § 1; 1903 c 125 § 1.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.060 Obstructing enforcement, unlawful—Tests. It shall be unlawful for any person to wilfully hinder, obstruct, or resist the director of agriculture or any duly authorized representative, or any peace officer acting under him or them, when engaged in the performance of the duties or in the exercise of the powers conferred by this chapter, and it shall be unlawful for any person to wilfully fail to comply with or violate any rule, regulation or order promulgated by the director of agriculture or his duly authorized representatives under the provisions of this chapter. The director of agriculture shall have the authority under such rules and regulations as shall be promulgated by him to enter at any reasonable time the premises of any livestock owner to make tests on any animals for diseased conditions, and it shall be unlawful for any person to interfere with such tests in any manner, or to violate any segregation or identification order made in connection with such tests by the director of agriculture, or his duly authorized representative. [1985 c 415 § 2; 1979 c 154 § 12; 1947 c 172 § 5; 1927 c 165 § 6; Rem. Supp. 1947 § 3115. Prior: 1895 c 167 § 3.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.070 Danger of infection—Emergencies. Whenever a majority of any board of health, board of county

commissioners, city council or other governing body of any incorporated city or town, or trustees of any township, whether in session or not, shall, in writing or by telegraph, notify the director of agriculture of the prevalence of or probable danger of infection from any of the diseases of domestic animals the director of agriculture personally, or by the supervisor of dairy and livestock, or by a duly appointed and deputized veterinarian of the division of dairy and livestock, shall at once go to the place designated in said notice and take such action as the exigencies may in his judgment demand, and may in case of an emergency appoint deputies or assistants, with equal power to act. The compensation to be paid such emergency deputies and assistants, shall be fixed by the director of agriculture in conformity with the standards effective in the locality in which the services are performed. [1947 c 172 § 6; 1927 c 165 § 7; Rem. Supp. 1947 § 3116. Prior: 1895 c 167 § 4.]

16.36.080 Veterinarians to report diseases. It shall be unlawful for any person registered to practice veterinary medicine, surgery and dentistry in this state not to immediately report in writing to the director of agriculture the discovery of the existence or suspected existence among domestic animals within the state of any reportable diseases as published by the director of agriculture. [1947 c 172 § 7; 1927 c 165 § 8; Rem. Supp. 1947 § 3117.]

16.36.090 Destruction of diseased or quarantined animals. Whenever in the opinion of the director of agriculture, upon the report of the state veterinarian, the public welfare demands the destruction of any animal found to be affected with any infectious, contagious, communicable or dangerous disease, or held under quarantine for brucellosis when the owner of the animal fails or refuses to follow a herd plan established by the state veterinarian, he shall be authorized to, by written order, direct such animal or animals to be destroyed by or under the direction of the state veterinarian. [1985 c 415 § 3; 1979 c 154 § 13; 1947 c 172 § 8; 1927 c 165 § 9; Rem. Supp. 1947 § 3118. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.096 State-federal cooperation against diseases—Slaughter—Indemnities, minimum. The director of agriculture, in order to protect the public health and welfare, may enter into cooperative programs with the federal government or agencies thereof for the prevention or eradication of any contagious, infectious, or communicable disease which is affecting or which may affect the health of the animal population of this state.

The director of agriculture may also order the slaughter or destruction of any animal affected with or exposed to such a disease and pay indemnities to the owner of such animal. The director of agriculture may pay an indemnity in an amount not to exceed fifty percent of the appraised or salvage value of the animal ordered slaughtered or destroyed and the actual amount shall be established by the director of agriculture by rule: PROVIDED, HOWEVER, The amount of indemnities paid for cattle under this chapter shall not be less than twenty-five dollars for any grade beef breed female, fifty dollars for any purebred registered beef breed bull or female, one hundred dollars for any grade dairy breed female or one hundred fifty dollars for any purebred registered dairy breed bull or female.

In ordering the slaughter or destruction of any animals pursuant to this section, the provisions for payment of indemnity shall not apply to animals (1) belonging to the federal government or any of its agencies, this state or political subdivision thereof, or any municipal corporation; and (2) to any animals which have been brought into this state and have been in this state for a period of less than six months before being ordered slaughtered or destroyed by the director of agriculture. [1985 c 415 § 4; 1963 ex.s. c 8 § 1.]

16.36.100 Cooperation with federal government. The governor and the director of agriculture shall have the power to cooperate with the government of the United States in the prevention and eradication of diseases of domestic animals and the governor shall have the power to receive and receipt for any moneys receivable by this state under the provisions of any act of congress and pay the same into the hands of the state treasurer as custodian for the state to be used and expended in carrying out the provisions of *this act and the act or acts of congress under which said moneys are paid over to the state. [1927 c 165 § 10; RRS § 3119. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

***Reviser's note:** For "this act," see note following RCW 16.36.010.

16.36.103 Swine—Treatment of garbage—Investigation of premises. All garbage before being fed to swine shall be thoroughly heated to at least two hundred and twelve degrees fahrenheit for at least thirty minutes in equipment and by methods approved by the director. The director may enter at reasonable times upon any private or public property for the purpose of investigating conditions relating to the treating of garbage to be fed to swine. [1953 c 17 § 3.]

16.36.105 Swine, garbage feeding, license—Fee. No person shall feed garbage to swine without first securing a license therefor from the department of agriculture. The license shall be renewed on the thirtieth of June of each year. Application therefor shall be accompanied by a license fee of ten dollars which shall be returned to the applicant if the license is denied, or credited to the general fund if the license is granted. The license is nontransferable and a separate license shall be required for each place of business if an operator has more than one feeding station. [1953 c 17 § 4.]

Feeding of carcasses to swine: RCW 16.68.150.

16.36.107 Swine, garbage feeding, license—Application—Inspection—Facilities required. Upon receipt of an application for a license to feed garbage, the director shall cause an inspection to be made of the premises to determine that the location, construction and facilities meet the following requirements and any rules or regulations on sanitation which may be hereafter promulgated:

(1) Feeding platforms must be constructed of impervious material which must be kept reasonably clean at all times

with provision for the proper disposal of all refuse to prevent fly breeding, harboring of rats or other insanitary conditions.

(2) Ample water supply under pressure must be provided to properly clean the feeding area and an approved drainage system must be provided for all cleaning operations. [1953 c 17 § 5.]

16.36.108 Swine, garbage feeding, license—Denial or revocation. Upon failure to comply with any of the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, or 16.36.107, or any rules or regulations promulgated under chapter 16.36 RCW, the director may revoke such license or refuse to issue a license to an applicant after first giving the licensee or applicant an opportunity to be heard in regard to the violation. [1953 c 17 § 6.]

16.36.109 Swine, garbage feeding, license—Exemptions. RCW 16.36.103, 16.36.105, 16.36.107 and 16.36.108 shall not apply to any person feeding garbage from his own domestic household. [1953 c 17 § 7.]

16.36.110 Violations, gross misdemeanor—Injunction. A violation of or a failure to comply with any provision of this chapter or the rules adopted under this chapter shall be a gross misdemeanor. Each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, 16.36.107, 16.36.108 or 16.36.109 may be enjoined from continuing such violation. [1989 c 354 § 35; 1981 c 296 § 14; 1957 c 22 § 5. Prior: 1953 c 17 § 8; 1927 c 165 § 33; RRS § 3142.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1981 c 296: See note following RCW 15.04.020.

Chapter 16.38
LIVESTOCK DISEASES—DIAGNOSTIC SERVICE PROGRAM

Sections

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.38.010 Declaration of purpose. The production of livestock is one of the largest industries in this state; and whereas livestock disease constitutes a constant threat to the public health and the production of livestock in this state; and whereas the prevention and control of such livestock diseases by the state may be best carried on by the establishment of a diagnostic service program for livestock diseases; therefore it is in the public interest and for the purpose of protecting health and general welfare that a livestock diagnostic service program be established. [1969 c 100 § 1.]

16.38.020 Director authorized to carry on diagnostic program. The director of agriculture is hereby authorized to carry on a diagnostic service program for the purpose of diagnosing any livestock disease which affects or may affect any livestock which is or may be produced in this state or otherwise handled in any manner for public distribution or consumption. [1969 c 100 § 2.]

16.38.030 Employment of personnel. In carrying out such diagnostic service program the director of agriculture may employ, subject to the state civil service act, chapter 41.06 RCW, the necessary personnel to properly effectuate such diagnostic service program. [1969 c 100 § 3.]

16.38.040 Agreements and/or contracts with other entities. In carrying out such diagnostic service program the director of agriculture may enter into agreements and/or contracts with any other governmental agencies whether state or federal or public institution such as Washington State University or private institutions and/or research organizations. [1969 c 100 § 4.]

16.38.050 Acceptance of gifts, funds, equipment, etc. In carrying out such diagnostic service program, the director of agriculture may accept public or private funds, gifts or equipment or any other necessary properties. [1969 c 100 § 5.]

16.38.060 Schedule of fees may be established—Use. The director may, following a public hearing, establish a schedule of fees for services performed in carrying out such diagnostic service program. All fees collected under this provision shall be retained by the director of agriculture to be spent only for carrying out the purposes of this chapter. [1986 c 203 § 6; 1969 c 100 § 6.]

Severability—1986 c 203: See note following RCW 15.04.100.

Chapter 16.44
DISEASES OF SHEEP

Sections

Diseased animals, sale, etc.: RCW 9.08.020.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.44.020 Duty to inspect sheep—Quarantine—Certificate to transfer—Expenses under quarantine—Oaths. It shall be the duty of the director of agriculture to cause to be investigated by qualified representatives of the division of dairy and livestock all cases of contagious, infectious and communicable diseases among sheep within this state which may come to his or their knowledge, and to make official visits of inspection of any locality where such diseases exist or where they have reason to believe that such diseases may exist, and to inspect or cause to be inspected by a duly qualified veterinarian any sheep within the state, and all sheep brought into the state, from any other state, territory or foreign country, and he or they shall have authority to order a quarantine of any infected premises, and in case any such disease shall become prevalent in any locality within the state, the director of agriculture may issue a proclamation forbidding any sheep from being transferred from said locality without a certificate issued by him or under his direction by a representative of the division of dairy and livestock showing such animals to be in good health. The expenses of herding, feeding and caring for sheep quarantined under the provisions of this section shall be paid by the owner thereof. The director of agriculture, the supervisor and all inspectors and veterinarians of the division of dairy and livestock shall have the power to administer oaths and examine witnesses in so far as the same may be necessary in the performance of their duties. [1927 c 165 § 16; RRS § 3125. Prior: See Reviser's note below. Formerly RCW 16.44.020 and 16.44.090, part.]

Reviser's note: For prior laws on this subject, see 1925 ex.s. c 56; 1909 c 189; 1907 c 112; 1901 c 76; 1897 c 26; 1895 c 143; 1888 c 116; Code 1881 §§ 2228-2237; 1873 pp 481, 482; 1869 pp 377, 378; 1867 pp 148, 149; 1866 pp 104-106.

Expenses incurred under provisions of chapter 16.44 RCW paid by owner of sheep: RCW 16.44.090.

16.44.030 Out of state infection—Importation prohibited—Proclamation—Penalty. Whenever the governor has reason to believe, or the director of agriculture shall certify to the governor, that scabies or other contagious, infectious or communicable diseases of sheep have become prevalent in any locality or localities of any other state or territory or foreign country, or that conditions exist that render sheep from such locality likely to convey disease, the governor shall by proclamation declare such locality as presumably infected, and prohibit importation therefrom of any sheep into this state, except as under such restrictions as the director of agriculture may deem proper. Any person, persons, firm or corporation, who, after publication of such proclamation, having in charge or receiving any sheep from any of the prohibited districts, transports, conveys or drives the same to or within the limits of this state shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and shall be liable for all damages sustained by any person, persons, firm or corporation by reason of the importation into this state of such sheep from prohibited districts: PROVIDED, HOWEVER, That nothing contained in this section shall prohibit the transportation of animals from such prohibited districts through the state by railroad or steamboat under such restrictions and regulations as may be prescribed by the law of this state or by the government of the United States. [1927 c 165 § 17; RRS § 3126. Prior: See Reviser's note to RCW 16.44.020.]

16.44.040 Cooperation with federal agency—Manner of treatment. The governor shall, through the secretary of agriculture of the United States government, request the cooperation of the United States bureau of animal industry in controlling and eradicating contagious, infectious and communicable diseases in sheep, and when said bureau, through its duly authorized representatives, agents or employees, shall be thus engaged, they shall possess the same power and authority in this state as the director of agriculture and the supervisor and veterinary inspectors of the division of dairy and livestock by virtue of *this act; and all dipping and other treatment required for the control and eradication of such diseases within this state shall be performed in the manner prescribed by the United States bureau of animal industry, and the dips, remedies and appliances used shall be those approved by said bureau. [1927 c 165 § 18; RRS § 3127. Prior: See Reviser's note to RCW 16.44.020. FORMER PART OF SECTION: 1927 c 165 § 20; RRS § 3129, now codified in RCW 16.44.045.]

***Reviser's note:** For "this act," see note following RCW 16.36.010.

16.44.045 Authority to inspect, quarantine and treat sheep. The director of agriculture and the supervisor and veterinary inspectors of the division of dairy and livestock and the officials of the United States bureau of animal industry shall have authority to inspect, quarantine and treat sheep affected with any contagious, infectious or communicable disease or diseases, or suspected of being so affected, or that have been exposed to any such disease. [1927 c 165 § 20; RRS § 3129. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.040, part.]

Duty of officials to exercise care—Penalty: RCW 16.44.150.

16.44.050 Quarantine areas—Penalty for breaking. In all cases where quarantine of sheep is authorized by the provisions of *this act, the director of agriculture, the supervisor and the veterinarians and inspectors of the division of dairy and livestock and the officials of the United States bureau of animal industry are each and all empowered to designate and specify the place, limits and boundaries of any quarantine area or territory, and they are hereby given authority over the same until the purpose of such quarantine shall have been effected, and any person, persons, firm or corporation owning or having in his or their possession any sheep within such quarantined area, who shall permit or allow any of such sheep to go beyond the limits of such area, without permit from the official in charge, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and each of the officials above named are hereby clothed with full authority to control sheep and territory in quarantine, and to take and hold possession thereof as provided by the terms of *this act, and for all purposes thereof. [1927 c 165 § 27; RRS § 3136. Prior: See Reviser's note to RCW 16.44.020.]

***Reviser's note:** For "this act," see note following RCW 16.36.010.

16.44.060 Scabies—Dipping—Certificate of health. Whenever it becomes necessary by reason of the prevalence of scabies, or exposure to scabies, of the sheep of any county or counties in this state, the director of agriculture shall have full authority to issue an order compelling the dipping of all the sheep in such county, counties or localities, whether all the sheep at the time be affected with or exposed to scabies or not; and such dipping shall be done under the supervision of a duly appointed and qualified veterinary inspector of the division of livestock or a federal inspector, and shall be done in some dip or dips approved by the United States bureau of animal industry, and be performed in a manner in accordance with the rules and regulations of said bureau. After dipping, when the official in charge shall be satisfied that the sheep are in a sound and healthy condition, the owner shall be entitled to receive a certificate to that effect signed by said official in such form as the director of agriculture may prescribe and such certificate shall permit the sheep to move in and through all counties in this state so long as they remain free from disease and exposure thereto. [1927 c 165 § 19; RRS § 3128. Prior: See Reviser's note to RCW 16.44.020.]

16.44.070 Quarantine of entire flock—Dipping—Notice—Penalty. Whenever upon inspection as provided in RCW 16.44.045, any sheep, or band or flock of sheep, or any portion of them kept or herded in any county of the state shall be found infected with scabies or any other contagious, infectious or communicable disease, the entire band or flock in which said infected sheep are running or ranging shall be considered as infected and treated as such and the officer making the inspection shall immediately quarantine the entire band or flock and forthwith notify the owner or person in charge of such sheep in writing, to dip said sheep twice for said disease within the period of thirty days from said notice; the first dipping not to exceed fifteen days from the receipt of said notice; and the second dipping to be within the period from ten to fourteen days thereafter; and also notify the owner or person in charge of such sheep in writing to keep such sheep free from contact with other sheep, during such period, by such means as the officer shall specify until after the second dipping: PROVIDED, That in case the owner or person in charge shall regard it unsafe to dip such sheep on account of their condition, especially ewes heavy with lamb, or by reason of the inclemency of the weather, the official in charge may authorize such owner or person in charge to place such sheep in a corral, field, feedyard or appropriate range, where such sheep shall be kept under quarantine regulations and free from contact with other sheep until such time as they are in condition to and are dipped as hereinabove provided. Any person or persons so allowed to keep sheep in such corral, field, feedyard or range, who shall wilfully or knowingly take or permit to be taken any sheep therefrom, except as permitted or directed by the officer in charge, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 21; RRS § 3130. Prior: See Reviser's note to RCW 16.44.020.]

16.44.080 Refusal to dip—Seizure—Cost. If any owner or person in charge of any sheep shall neglect or refuse to dip the same as required by this act upon the request of the director of agriculture or his duly authorized representative or any federal official clothed with power under *this act, or to permit the same to be dipped by them, it shall be the duty of such officer to seize such animals and dip the same, and he is hereby given authority so to do, and when in the opinion of the officer the sheep are restored to health and free from possible infection he shall notify in writing the owner or person in charge of the sheep of the amount of the costs, charges and expenses incurred by him, and the same shall be paid within ten days of the receipt of such notice and shall be a lien on the sheep and may be collected in the manner provided by law for the foreclosure of personal property liens. [1927 c 165 § 24; RRS § 3133. Prior: See Reviser's note to RCW 16.44.020.]

***Reviser's note:** For "this act," see note following RCW 16.36.010.

16.44.090 Expense—Lien—Foreclosure. The expenses of inspection, feeding, holding, dipping, treating and taking of all sheep inspected, quarantined, dipped or otherwise treated under the provisions of *this act, must be paid by the owner of such sheep and such charge shall be a lien upon such sheep for such charges and expenses, which lien shall be prior and paramount to any and all other liens, demands or other claims against such sheep, and the director of agriculture, the supervisor and inspectors of the division of dairy and livestock and the officers of the United States bureau of animal industry may retain possession of such sheep until such charges and expenses have been paid. Such liens shall be enforced at any time after ten days from the date when such charge shall be incurred and shall not be dependent upon possession of said sheep and may be foreclosed in the name of the state upon the relation of the director of agriculture in the manner provided by law for the foreclosure of other liens upon personal property; or in lieu of foreclosing such lien the director of agriculture may bring an action in the name of the state upon his relation in any court of competent jurisdiction to recover the amount of such charges and expenses: PROVIDED, HOWEVER, That no charge shall be made for the personal services of any officer performed in the enforcement of the provisions of *this act in relation to the prevention and eradication of diseases of sheep. [1927 c 165 § 29; RRS § 3138. Prior: See Reviser's note to RCW 16.44.020. FORMER PART OF SECTION: 1927 c 165 § 16, part; RRS § 3125, part, now codified in RCW 16.44.020.]

***Reviser's note:** For "this act," see note following RCW 16.36.010.

Expenses of herding, feeding and caring for sheep quarantined paid by owner: RCW 16.44.020.

16.44.110 Importing sheep—Inspection—Penalty. It shall be the duty of every person, persons, firm or corporation, their agents or employees who shall drive or herd or cause to be driven or herded, or bring or cause to be brought, by railroad or trail into this state from any other state, territory or foreign country, any sheep, to immediately upon crossing the state line and before proceeding into the state a distance greater than two miles, to make written application to the director of agriculture, or his nearest

qualified representative, for the inspection of said sheep which application shall be delivered in person or by telegraph or telephone or registered letter. The application must state the time and place when and where the said sheep crossed the line, the locality from which they came, the name and residence of the owner or owners thereof, and of the person in control of the same, and the number, brands and character of the animals. The director of agriculture or his duly authorized representative on receiving such application shall at once proceed, either by himself or his duly authorized representative to inspect said sheep, and if upon inspection the officer making the inspection shall deem it necessary to prevent or avoid infection, shall cause said sheep to be quarantined not more than three miles from where they entered the state for such period as may be necessary, not to exceed thirty days, and if the officer shall deem it necessary he shall cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine. It shall be the duty of any person, persons, firm or corporation, their agents or employees, who shall ship into this state by railroad or steamboat from any other state, territory or foreign country any sheep, immediately upon unloading the same at any point within this state, to notify personally or by telegraph, telephone or registered letter the director of agriculture, and thereupon the director shall cause said sheep to be inspected, and if upon inspection the officer shall deem it necessary to prevent or avoid infection he shall cause said sheep to be quarantined not more than three miles from the point where they were unloaded for such period not exceeding thirty days as he may deem necessary and may cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine: PROVIDED, That this section shall not apply to sheep en route through the state on railroad trains or boat lines to other states: AND PROVIDED FURTHER, That any sheep held in quarantine under the provisions of this section may be released therefrom by the officer imposing the quarantine at any time for the purpose of immediate slaughter: AND PROVIDED FURTHER, That if in the opinion of the director of agriculture it is unnecessary to inspect sheep coming into this state from certain districts or localities in other states, territories or foreign countries he may issue an order dispensing with such inspection and restriction. Any person, persons, firm or corporation violating or failing to comply with any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars and such fine shall be a lien upon the sheep and may be foreclosed in the manner provided by law for the foreclosure of personal property liens, or may be enforced by judgment against the offending party. [1927 c 165 § 23; RRS § 3132. Prior: See Reviser's note to RCW 16.44.020.]

16.44.120 Importing infected sheep—Disinfecting places, boats and cars—Authority to enforce—Penalties. Any person, persons, firm or corporation who shall drive or cause to be driven, bring or cause to be brought, ship or cause to be shipped into this state from any other state, territory or foreign country, any sheep infected with scabies or other contagious, infectious or communicable disease knowing the same to be so infected shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than one thousand dollars, and in case the offending party is a corporation its officers shall be liable in the same manner as individuals would be liable. Any transportation company which shall convey from point to point within this state any sheep infected with scabies or any other contagious, infectious or communicable disease, knowing the same to be so infected, shall be deemed guilty of a misdemeanor and shall be punished as in this section above provided. It shall be the duty of such transportation company whose corrals, guards, pens, sheds, chutes, cars or boats shall have been occupied by infected sheep to within forty-eight hours after the same have been so occupied cause the same to be disinfected in accordance with the rules of the United States bureau of animal industry relating to the disinfection of places, boats and cars and any transportation company who shall fail or neglect to cause such disinfection shall be deemed guilty of a misdemeanor and punished as in this section above provided and the director of agriculture, his duly authorized representative, and the officers of the United States bureau of animal industry shall each have authority to enforce the provisions of this section relating to disinfection and in case such transportation company fails or neglects for a period of forty-eight hours to so disinfect such cars, guards, pens, sheds, chutes or boats the officials may take possession of the same, and proceed to disinfect them at the expense of such company, such expense to be recovered in an action in the name of the state upon relation of the director of agriculture in any court of competent jurisdiction. [1927 c 165 § 25; RRS § 3134. Prior: See Reviser's note to RCW 16.44.020.]

16.44.130 Sale of infected sheep—Penalty. It shall be unlawful for any person, firm or corporation to sell, exchange, give away or in any manner part with to another, any sheep infected with any contagious or infectious or communicable disease, or any sheep which has, or which the owner or his agent or employee or the person in charge thereof, has reason to believe has, within thirty days next preceding such transfer been exposed to any contagious, infectious or communicable disease, without first notifying the person, firm or corporation to whom such sheep is transferred that it is so infected, or that it has been so exposed, and every person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 26; RRS § 3135. Prior: See Reviser's note to RCW 16.44.020.]

16.44.140 Duty to report infection—Penalty. It shall be the duty of any person, persons, firm or corporation owning or having in his or their control any sheep which have become infected with scabies or any other contagious, infectious or communicable disease or which have been exposed in any manner to such disease, to immediately report the same to the director of agriculture by registered letter, telegraph, telephone or in person within ten days after

said condition has come to his or their knowledge and any person, persons, firm or corporation failing so to do or attempting to conceal the existence of any such disease, or wilfully obstructing or hindering the director of agriculture or the supervisor or any inspector of the division of dairy and livestock or any officer of the United States bureau of animal industry in the discharge of his or their duties under the provisions of *this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 28; RRS § 3137. Prior: See Reviser's note to RCW 16.44.020.]

*Reviser's note: For "this act," see note following RCW 16.36.010.

16.44.150 Duty of officials to exercise care—Penalty. It shall be the duty of the director of agriculture and the supervisor and veterinarians and inspectors of the division of dairy and livestock acting under the provisions of *this act, to use every precaution to protect the sheep under their care from injury, and to select proper places for quarantining and dipping, and to enforce quarantine regulations in such manner as to make the expenses as light as possible upon the owner, consistent with public interest; and any such officer who by virtue of any power conferred upon him under *this act, wilfully oppresses, wrongs or injures any person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 31; RRS § 3140. Prior: See Reviser's note to RCW 16.44.020.]

*Reviser's note: For "this act," see note following RCW 16.36.010.

16.44.160 Negligence of owner of infected stock—Liability. Whenever any sheep affected with scabies or any other contagious, infectious or communicable disease shall mingle with any healthy animals belonging to another, through the fault or negligence of the owner of said diseased sheep, his agent or employees, such owner shall be liable in any action at law for all damages sustained by the owner of such healthy sheep. [1927 c 165 § 32; RRS § 3141. Prior: See Reviser's note to RCW 16.44.020.]

16.44.180 Penalty. Every person who shall violate or fail to comply with any of the provisions of this chapter for which violation or failure to comply no specific penalty is provided in this chapter shall be deemed guilty of a misdemeanor. [1957 c 22 § 7. Prior: 1927 c 165 § 33; RRS § 3142; prior: See Reviser's note to RCW 16.44.020.]

Chapter 16.48
INSPECTION OF MEAT STORAGE OR SALE LOCATIONS

(Formerly: Slaughtering and transporting livestock)

Sections

16.48.120 Disposition of fees. Funds collected for license fees and inspection fees shall be retained by the director of agriculture to be used for the enforcement of *this act, chapter 75, Laws of 1937 and chapter 198, Laws of 1939. [1945 c 161 § 6; Rem. Supp. 1945 § 3169-25.]

*Reviser's note: (1) "this act" (1945 c 161) was codified as RCW 16.48.050, 16.48.080, 16.48.090, 16.48.100 through 16.48.120, 16.48.140, 16.48.210 through 16.48.250, and 16.48.312.

(2) Chapter 75, Laws of 1937 was codified as RCW 16.48.011 through 16.48.040, 16.48.130, 16.48.160 through 16.48.170, 16.48.190, 16.48.260, 16.48.310, and 16.48.320.

(3) Chapter 198, Laws of 1939 was codified as RCW 16.48.130, 16.48.170, 16.48.180, 16.48.200, and 16.48.320.

16.48.280 Right of entry by inspectors. Inspectors or agents employed by the director shall have the right to enter, during business hours, any meat shop, restaurant or refrigerated locker plant, or any other place where meat is commercially stored or sold to make inspections of carcasses and to examine the books and records required by law to be kept therein and to compare the carcasses with such records. [1949 c 98 § 13; Rem. Supp. 1949 § 3055-18.]

16.48.310 Rules and regulations—1937 act. The director of agriculture is hereby authorized to make and promulgate rules and regulations for the enforcement of *this act but no such rules and regulations shall be inconsistent with the provisions herein prescribed. [1937 c 75 § 16; RRS § 3169-16. FORMER PARTS OF ACT: (i) 1949 c 98 § 17; Rem. Supp. § 3055-21, now codified in RCW 16.48.311. (ii) 1945 c 161 § 14; Rem. Supp. 1945 § 3169-33, now codified in RCW 16.48.312.]

*Reviser's note: For "this act," see note following RCW 16.48.120.

16.48.311 Rules and regulations—1939 and 1945 acts. The director of agriculture is authorized and shall make such regulations as may be necessary to effectuate the provisions of *this act and the provisions of chapter 198, Laws of 1939: PROVIDED, That such regulations shall be consistent with the provisions of *this act and of chapter 198, Laws of 1939. [1945 c 161 § 14; Rem. Supp. 1945 § 3169-33. Formerly RCW 16.48.300, part.]

*Reviser's note: For "this act and . . . chapter 198, Laws of 1939," see note following RCW 16.48.120.

16.48.312 Rules and regulations—1949 act. The director of agriculture is authorized to make and promulgate rules and regulations for the enforcement of *this act but no such rules and regulations shall be inconsistent with the provisions herein prescribed. [1949 c 98 § 17; Rem. Supp. 1949 § 3055-21. Formerly RCW 16.48.310, part.]

*Reviser's note: "this act" (1949 c 98) was codified as RCW 16.48.010, 16.48.040, 16.48.130, 16.48.150 through 16.48.160, 16.48.180, 16.48.270 through 16.48.300, 16.48.311, 16.48.325, 16.56.040, 16.56.120, 16.56.125, 16.64.020, and 16.64.040.

16.48.320 Penalties—1939 and 1937 acts. Any person or persons found guilty of violating any of the provisions of *this act and of chapter 156 of the Session

Laws of 1935 shall be punished as prescribed by law for such offense and any person or persons who shall fail to perform any of the mandatory duties required by these acts shall be guilty of a misdemeanor. [1939 c 198 § 6; 1937 c 75 § 15; RRS § 3169-15. FORMER PART OF SECTION: 1949 c 98 § 18; Rem. Supp. 1949 § 3055-22, now codified in RCW 16.48.325.]

*Reviser's note: For "this act," see note following RCW 16.48.120; "chapter 156 of the Session Laws of 1935" was codified in chapter 16.59 RCW, later repealed by 1959 c 54 § 39.

16.48.325 Penalties—1949 act. Violations of *this act, not otherwise provided for, shall be a misdemeanor. [1949 c 98 § 18; Rem. Supp. 1949 § 3055-22. Formerly RCW 16.48.300, part.]

*Reviser's note: For "this act," see note following RCW 16.48.312.

Chapter 16.49
CUSTOM SLAUGHTERING

Sections

16.49.435 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or the director's designee.

(3) "Custom farm slaughterer" means any person licensed under this chapter who may under such license engage in the business of slaughtering meat food animals only for the consumption of the owner thereof through the use of an approved mobile unit under such conditions as may be prescribed by the director.

(4) "Custom slaughtering establishment" means the facility operated by any person licensed under this chapter who may under such license engage in the business of slaughtering meat food animals only for the consumption of the owner thereof at a fixed location under such conditions as may be prescribed by the director.

(5) "Custom meat facility" means the facility operated by any person licensed under this chapter who may under such license engage in the business of preparing uninspected meat for the sole consumption of the owner of the uninspected meat being prepared. Operators of custom meat facilities may also prepare inspected meat for household users only under such conditions as may be prescribed by the director and may sell such prepared inspected meat to household users only. Operators of custom meat facilities may also sell prepackaged inspected meat to any person, provided the prepackaged inspected meat is not prepared in any manner by the operator and the operator does not open or alter the original package that the inspected meat was placed in.

(6) "Inspected meat" means the carcasses or parts thereof of meat food animals which have been slaughtered and inspected at establishments subject to inspection under chapter 16.49A RCW or a federal meat inspection act.

(7) "Uninspected meat" means the carcasses or parts thereof of meat food animals which have been slaughtered by the owner thereof, or which have been slaughtered by a custom farm slaughterer.

(8) "Household user" means the ultimate consumer, the members of the consumer's household, and his or her nonpaying guests and employees.

(9) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(10) "Meat food animal" means cattle, swine, sheep, or goats.

(11) "Official establishment" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal meat inspection act (21 U.S.C. Sec. 71 et seq.).

(12) "Prepared" means canned, salted, rendered, boned, cut up or otherwise manufactured, or processed. [1987 c 77 § 4.]

Savings—1987 c 77: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, and does not affect any proceeding instituted under those sections." [1987 c 77 § 12.]

16.49.440 Custom slaughtering and custom meat licenses—Generally—Equipment inspection. It shall be unlawful for any person to act as a custom farm slaughterer or to operate a custom slaughtering establishment or custom meat facility without first obtaining a license from the director. The license shall be an annual license and shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. For custom farm slaughterers, a separate license shall be required for each mobile unit. Each custom slaughtering establishment and custom meat facility shall also require a separate license. Application for a license shall be made on a form prescribed by the director of agriculture and accompanied by a twenty-five dollar annual license fee. The application shall include the full name and address of the applicant. If the applicant is a partnership or corporation, the application shall include the full name and address of each partner or officer. The application shall further state the principal business address

of the applicant in the state or elsewhere and the name of a resident of this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director of agriculture. The license shall be issued by the director upon his satisfaction that the applicant's equipment is properly constructed, has the proper sanitary and mechanical equipment and is maintained in a sanitary manner as required under this chapter and/or rules adopted hereunder. The director of agriculture shall also provide for the periodic inspection of equipment used by licensees to assure compliance with the provisions of this chapter and the rules adopted hereunder. [1991 c 109 § 4; 1987 c 77 § 1; 1985 c 415 § 5; 1959 c 204 § 44.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.441 Custom farm slaughterers—Prelicense inspections. Before issuing any license to operate as a custom farm slaughterer, the director shall inspect the applicant's mobile unit and slaughtering equipment and only upon the director's satisfaction that the applicant's mobile unit and equipment is properly constructed, has the proper sanitary and mechanical equipment, and is capable of being maintained in a sanitary manner as required under this chapter and the rules adopted hereunder shall the applicant be issued a license. [1987 c 77 § 6.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.442 Additional fee for late renewal—Exception. If the application for the renewal of any license provided for under this chapter is not filed prior to the expiration date, an additional fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That the additional fee shall not be charged if the applicant furnishes an affidavit certifying that the applicant has not carried on the activity for which the applicant was licensed under this chapter subsequent to the expiration of the applicant's license. [1991 c 109 § 5; 1985 c 415 § 11.]

16.49.444 Denial, suspension, revocation of license—Grounds. The director of agriculture may, subsequent to a hearing under chapter 34.05 RCW, deny, suspend, or revoke any license required under this chapter if it is determined that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the department of agriculture;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested under this chapter; or

(3) Refused the director of agriculture access to any facilities or parts of the facilities subject to this chapter. [1985 c 415 § 12.]

16.49.451 Custom farm slaughterer—Transport of offal. Notwithstanding any other provisions of the law, any custom farm slaughterer may, without the need for any other license, transport the offal of a meat food animal he has slaughtered for the owner thereof, when such offal is transported as a part of such slaughtering transaction and such offal is handled in a sanitary, suitable container and manner as provided by the director. [1967 ex.s. c 120 § 4.]

16.49.454 Establishment of need—Contents of application—Hearing. No person shall operate a custom slaughtering establishment without first establishing the need for such an establishment. In addition to the requirements under RCW 16.49.440, applications to operate custom slaughtering establishments shall contain the following:

(1) The location of the facility to be used.

(2) The day or days of intended operation.

(3) The distance to the closest official establishment.

(4) Whether the facility already exists or is to be constructed.

(5) Any other matters that the director may require.

Upon receipt of such application the director shall provide for a hearing to be held in the area where the applicant intends to operate a custom slaughtering establishment. Such hearing shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. Upon the director's determination that such a custom slaughtering establishment is necessary in the area applied for and that the applicant has satisfied all other requirements of this chapter relating to custom slaughtering establishments including minimum facility requirements as prescribed by the director, the director shall issue a limited license to such applicant to operate such an establishment. When and if an official establishment is located and operated in the area, the director may deny renewal of the limited license subject to a hearing. [1989 c 175 § 53; 1987 c 77 § 2; 1961 c 91 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.500 Washington State University laboratories exemption—Inspection, stamping. For the purpose of carrying out its teaching, research, and extension programs, the Washington State University meats laboratory(s) shall be exempt from the licensing provisions of this chapter and shall be issued an official establishment number and stamp. Such slaughter operations shall be conducted under inspection, as provided in this chapter, by a qualified inspector under veterinary supervision by the college of veterinary medicine of the Washington State University. Meat animals slaughtered in the laboratory(s) shall bear the stamp "Inspected and Passed". [1959 c 204 § 50.]

16.49.510 Penalty. The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a gross misdemeanor. [1985 c 415 § 6; 1959 c 204 § 51.]

16.49.610 Custom meat facilities—Conditions for preparation of inspected and uninspected meat and sale of inspected meat. Inspected and uninspected meat may only be prepared by a custom meat facility under the following conditions:

(1) Inspected meat and the meat and meat food products prepared therefrom shall be separated at all times from uninspected meat and the meat food products prepared therefrom, by a sufficient distance to prevent inspected meat from coming into contact with uninspected meat.

(2) Preparation of inspected meat and uninspected meat shall be done at different times.

(3) No sales of inspected meat, nor the meat food products derived therefrom shall be made to any person other than a household user.

(4) Uninspected meat shall be prepared for the sole use of the owner of said uninspected meat, who shall be a household user.

(5) Inspected meat may be purchased by a custom meat facility for preparation and sale to a household user only.

(6) Uninspected meat, as well as the packages and containers containing any meat or meat food products prepared therefrom shall be plainly marked and labeled "not for sale" or as otherwise prescribed by the director.

(7) Any custom meat facility shall comply with sanitation rules and regulations promulgated by the director. [1987 c 77 § 3; 1985 c 415 § 7; 1971 ex.s. c 98 § 3.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.630 Custom meat facilities—License—Generally. It shall be unlawful for any person to operate a custom meat facility without first obtaining an annual license from the department of agriculture. Application for such license shall be on a form prescribed by the department and accompanied by a twenty-five dollar license fee. Such application shall include the full name of the applicant, if such applicant is an individual, receiver, or trustee; and the full name of each member of the firm or the names of the officers of the corporation if such applicant is a firm or corporation. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of the person domiciled in this state authorized to receive and accept service of legal process of all kinds for the applicant, and the applicant shall supply any other information required by the department. All custom meat facility licenses shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 6; 1971 ex.s. c 98 § 5.]

16.49.635 Custom meat facilities—Prelicense inspections. Before issuing any license to operate a custom meat facility, the director shall inspect the applicant's premises and only upon the director's satisfaction that the applicant's facility and equipment is properly constructed, has the proper sanitary and mechanical equipment, and is capable of being maintained in a sanitary manner as required under this chapter and the rules adopted hereunder shall the applicant be issued a license. [1987 c 77 § 7.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.670 Custom meat facilities—Ordinances may be more restrictive. The provisions of this chapter relating to custom meat facilities and RCW 16.49A.370 shall in no way supersede or restrict the authority of any county or any city to adopt ordinances which are more restrictive for the handling of meat than those provided for herein. [1987 c 77 § 11; 1971 ex.s. c 98 § 9.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.680 Rules. To ensure the sanitary slaughtering of meat food animals and handling of meat and meat food products by licensees under this chapter, the director may adopt such rules as the director finds necessary to protect public health and safety. To ensure the identification of meat food animals slaughtered by licensees and the meat and meat food products handled by licensees, both as to ownership and as to whether the product is uninspected meat or inspected meat, the director may adopt such rules as the director finds necessary. The director may also adopt such other rules as the director finds necessary to carry out this chapter. [1987 c 77 § 5.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.690 Inspections. To ensure that licensees under this chapter maintain proper sanitary practices and comply with all the provisions of this chapter and the rules adopted hereunder, the director may inspect the mobile unit of any custom farm slaughterer and the premises of any custom slaughtering establishment or custom meat facility at any reasonable time. No person may interfere with the director in the performance of his or her duties under this chapter or the rules adopted hereunder. [1987 c 77 § 8.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.700 Uninspected meat or meat food products—Unlawful to sell, trade, or give away—Revocation of license for violation. It is unlawful for any person to sell, trade, or give away uninspected meat or the meat food products that may be derived therefrom. Any violation of this section by a licensee under this chapter shall be sufficient reason for the revocation of the licensee's license. [1987 c 77 § 9.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.710 Violations of chapter or rules—Investigation by director—Subpoenas. The director may investigate any violation or possible violation of this chapter or any rule adopted under this chapter. In the furtherance of any such investigation, the director may issue subpoenas to compel the attendance of witnesses or the production of books or documents anywhere in the state. [1987 c 77 § 10.]

Savings—1987 c 77: See note following RCW 16.49.435.

Chapter 16.49A
WASHINGTON MEAT INSPECTION ACT

Sections

16.49A.010 Short title. This chapter may be known and cited as the "Washington meat inspection act". [1969 ex.s. c 145 § 1.]

16.49A.020 Declaration of purpose. The purposes of this chapter are to adopt new legislation governing meat and meat food products and to promote uniformity of state legislation with the federal meat inspection act. Meat and meat food products are an important source of the state's total supply of food. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Meat and meat food products not reaching these standards are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and animals which are regulated under this chapter substantially affect the public and that regulation by the director as contemplated by this chapter is appropriate to protect the health and welfare of consumers. [1969 ex.s. c 145 § 2.]

16.49A.030 Definitions govern construction. Unless the context otherwise requires, the definitions in RCW 16.49A.040 through 16.49A.250 govern the construction of this chapter. [1969 ex.s. c 145 § 3.]

16.49A.040 "Department." "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 145 § 4.]

16.49A.050 "Director." "Director" means the director of the department of agriculture or his duly authorized representative. [1969 ex.s. c 145 § 5.]

16.49A.060 "Person." "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors. [1969 ex.s. c 145 § 6.]

16.49A.070 "Consumer." "Consumer" means an ultimate consumer or any facility such as a restaurant, boarding house, institution or catering service which prepares

food for immediate consumption by the consumer on the premises where it is prepared or elsewhere. [1969 ex.s. c 145 § 7.]

16.49A.080 "Retail meat dealer." "Retail meat dealer" means any person who handles or prepares meat for the purpose of sale to consumers. [1969 ex.s. c 145 § 8.]

16.49A.090 "Wholesale meat dealer." "Wholesale meat dealer" means any person who prepares or handles meat for distribution or sale to any retail meat dealer or consumer, including any distribution facility owned or controlled by one or more retail meat dealers used for preparing meat or distributing meat to any such retail meat dealer or consumer. [1969 ex.s. c 145 § 9.]

16.49A.100 "Prepared." "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed. [1969 ex.s. c 145 § 10.]

16.49A.110 "Governmental unit." "Governmental unit" means any governmental unit, agency, or political subdivision including cities, towns and counties which may be formed under the laws of the state of Washington. [1969 ex.s. c 145 § 11.]

16.49A.120 "Animal food manufacturer." "Animal food manufacturer" means any person processing animal food derived wholly or in part from carcasses or parts or products of the carcasses of meat food animals. [1969 ex.s. c 145 § 12.]

16.49A.130 "Meat food product." "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or any other portion of the carcass of any meat food animal, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the director under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as it applies to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to meat food animals. [1969 ex.s. c 145 § 13.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.140 "Meat food animal." "Meat food animal" means cattle, sheep, swine, goats, horses or any other animal capable of use as a human food. [1969 ex.s. c 145 § 14.]

16.49A.150 "Capable of use as human food." "Capable of use as human food" means any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the director to deter its use as human food, or unless it is naturally inedible by humans. [1969 ex.s. c 145 § 15.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.160 "Adulterated." "Adulterated" means any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2) If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity, (b) a food additive, or (c) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(3) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392;

(4) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394;

(5) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396: PROVIDED, That an article which is not adulterated under subsection (2), (3) or (4) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the director in establishments at which inspection is maintained under this chapter;

(6) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(7) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(8) If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394;

(11) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or, if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(12) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance. [1969 ex.s. c 145 § 16.]

Color additives: RCW 69.04.396.

Food additives: RCW 69.04.394.

Pesticide chemicals in or on raw agricultural commodities: RCW 69.04.392.

16.49A.170 "Misbranded." "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (b) of this subsection (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the director;

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the director under RCW 16.49A.300(3) unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the director under RCW 16.49A.300(3), unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of subsection (7), unless its label bears (a) the common or usual name of the food, if any there be, and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the director, be designated as spices, flavorings, and colorings without naming each: PROVIDED, That, to the extent that compliance with the requirements of clause (b) of this subsection (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as prescribed by the director;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: PROVIDED, That, to the extent that compliance with the requirements of this subsection (11) is impracticable, exemptions shall be established by regulations promulgated by the director; or

(12) If it fails to bear directly thereon, or on its container as the director may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. [1969 ex.s. c 145 § 17.]

16.49A.180 "Label." "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article. [1969 ex.s. c 145 § 18.]

16.49A.190 "Labeling." "Labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1969 ex.s. c 145 § 19.]

16.49A.200 "Uniform Washington food, drug, and cosmetic act." "Uniform Washington food, drug, and cosmetic act" means chapter 69.04 RCW as enacted or hereafter amended. [1969 ex.s. c 145 § 20.]

16.49A.210 "Pesticide chemical", "food additive", "color additive", "raw agricultural commodity." "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the uniform Washington food, drug, and cosmetic act. [1969 ex.s. c 145 § 21.]

16.49A.220 "Official mark." "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article or animal under this chapter. [1969 ex.s. c 145 § 22.]

16.49A.230 "Official inspection legend." "Official inspection legend" means any symbol prescribed by regulations of the director showing that an article was inspected and passed in accordance with this chapter. [1969 ex.s. c 145 § 23.]

16.49A.240 "Official certificate." "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter. [1969 ex.s. c 145 § 24.]

16.49A.250 "Official device." "Official device" means any device prescribed or authorized by the director for use in applying any official mark. [1969 ex.s. c 145 § 25.]

16.49A.255 "Intrastate commerce." "Intrastate commerce" means any article in intrastate commerce whether such article is alive or processed and is intended for sale, held for sale, offered for sale, sold, stored, transported or handled in this state in any manner and prepared for eventual distribution to consumers in this state whether at wholesale or retail. [1969 ex.s. c 145 § 67.]

16.49A.260 Examination of animals before entry into slaughtering establishment—Disposition of diseased animals. For purposes set forth in RCW 16.49A.020, the director shall cause inspections and examinations of all meat animals for disease before they shall be allowed to enter into any slaughtering, packing, meat-canning, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in intrastate commerce; and all meat food animals found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other meat food animals, and when so slaughtered the carcasses of meat food animals shall be subject to careful examination and inspection, as provided by the rules and regulations adopted by the director under the provisions of this chapter. [1969 ex.s. c 145 § 26.]

16.49A.270 Examination and inspection of carcasses—Marking—Destruction of adulterated carcasses—Reinspection—Removal of inspectors, when. For purposes set forth in RCW 16.49A.020, the director shall cause a post mortem examination and inspection of the carcasses and parts thereof of all meat food animals to be prepared at any slaughtering, meat-canning, salting, packing, or similar establishments in this state as articles of intrastate commerce, which are capable of use as human food. The carcasses and parts thereof of such meat food animals found to be not adulterated shall, by the inspectors be marked, stamped, tagged or labeled as "Inspected and passed." The said inspectors shall label, mark, stamp or tag as "Inspected and condemned" all carcasses and parts thereof of meat food animals found to be adulterated. All carcasses and parts thereof of meat food animals found to be adulterated, and all carcasses and parts thereof thus inspected shall be destroyed for food purposes by the said establishment in the presence of an inspector. The director may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof. The inspectors shall reinspect the carcasses or part thereof when they deem it necessary to determine whether the carcasses or part thereof have become adulterated since the first inspection. If any carcass or parts thereof shall upon examination and inspection subsequent to the first examination, be found to be adulterated, it shall be destroyed for food purposes by said establishment in the presence of an inspector, and the director may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof. [1969 ex.s. c 145 § 27.]

16.49A.280 Application of foregoing provisions—Director may limit entry of articles into establishments. The foregoing provisions shall apply to all carcasses or parts of carcasses of meat food animals, or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products, which, after having been issued from any slaughtering, meat-canning, salting, packing, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The director may limit the entry of carcasses, parts of carcasses, meat food products and other materials into any establishment at which inspection under this chapter is maintained, under conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishment will be consistent with the purposes of this chapter. [1969 ex.s. c 145 § 28.]

16.49A.290 Inspection of meat food products—Marking—Destruction of adulterated products. For the purposes hereinbefore set forth the director shall cause to be made, by inspectors employed for that purpose, an examination and inspection of all meat food products prepared for sale or use in any slaughtering, meat-canning, salting, packing, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found not adulterated; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the director may remove inspectors from any establishment which fails to destroy such condemned meat food products. [1969 ex.s. c 145 § 29.]

16.49A.300 Containers, closing or sealing—Labeling requirements—False or misleading labels—Hearing—Appeal from director's determination. (1) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under the supervision of an inspector, which label shall state that the contents thereof have been "Inspected and passed" under the provisions of this chapter and no inspection and examination of meat or meat food products deposited or enclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained shall be deemed to be complete until such meat or meat food products have

been sealed or enclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(2) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the director may require, the information required under RCW 16.49A.170.

(3) The director, whenever he determines such action is necessary for the protection of the public, may prescribe: (a) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or meat food animals subject to this chapter; (b) definitions and standards of identity or composition for articles not inconsistent with any such standards established under the uniform Washington food, drug and cosmetic act.

(4) No article subject to this chapter shall be sold or offered for sale by any person, firm, or corporation, in this state, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the director are permitted.

(5) If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the superior court in the county in which such person, firm, or corporation has its principal place of business, or to the superior court of Thurston county. [1969 ex.s. c 145 § 30.]

Bacon, packaging at retail to reveal quality and leanness: RCW 69.04.205 through 69.04.207.

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.310 Inspection of establishments for sanitary conditions—Rules and regulations to maintain. The director shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection of slaughtering, meat-canning, salting, packing, or similar establishments in which meat food animals are slaughtered and the meat and meat food products thereof are prepared for sale or use in this state as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "Inspected and passed." [1969 ex.s. c 145 § 31.]

16.49A.320 Inspections to be made during nighttime as well as daytime. The director shall cause an examination and inspection of all meat food animals and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of sale or use in this state to be made during the nighttime as well as during the daytime when the slaughtering of said meat food animals, or the preparation of said food products is conducted during the nighttime. [1969 ex.s. c 145 § 32.]

16.49A.330 Prohibited practices. No person, firm, or corporation shall, with respect to any meat food animals or any carcasses, parts of carcasses, meat or meat food products of any such animals—

(1) Slaughter any such meat food animals or prepare any such articles which are capable of use as human food at any establishment preparing any such articles for sale or use in this state, except in compliance with the requirements of this chapter or the federal meat inspection act (21 USC 71 et seq.);

(2) Sell, knowingly transport, offer for sale, or knowingly offer for transportation, or knowingly receive for transportation, in intrastate commerce, (a) any such articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (b) any articles required to be inspected under this chapter or the federal meat inspection act (21 USC 71 et seq.) unless they have been so inspected and passed; or

(3) Do, with respect to any such articles which are capable of use as human food any act, knowingly while they are being transported in intrastate commerce, or while held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. [1969 ex.s. c 145 § 33.]

16.49A.340 Unlawful acts as to official devices, labels, certificates, etc. (1) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director.

(2) No person, firm, or corporation shall—

(a) forge any official device, mark, or certificate;

(b) without authorization from the director use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(c) contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(d) knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official

certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(e) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director; or

(f) knowingly represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted. [1969 ex.s. c 145 § 34.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.350 Restrictions on sale, transportation, etc., of equine meat or meat products. No person, firm, or corporation shall sell, knowingly transport, offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the director to show the kinds of animals from which they were derived. When required by the director, with respect to establishments at which inspection is maintained under this chapter, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which other meat food animals are slaughtered or their carcasses, parts thereof, meat or meat food products are prepared. [1969 ex.s. c 145 § 35.]

16.49A.360 Bribing inspector or other official—Acceptance of bribe—Penalty. Any person, firm or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of the state authorized to perform any of the duties prescribed by this chapter or by the rules and regulations of the director, any money or other thing of value, with intent to influence said inspector, or other officer or employee of the state in the discharge of any duty provided for in this chapter, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of the state authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value, given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged and shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars and by imprisonment for not less than one year nor more than three years. [1969 ex.s. c 145 § 36.]

16.49A.370 Exemptions from inspection requirements. (1) The provisions of this chapter requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations for intrastate commerce shall not apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor to the custom slaughter by any person, firm, or corporation of meat food animals delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees, nor to regularly licensed custom meat facilities.

(2) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection or not required to be inspected under this section. [1971 ex.s. c 98 § 1; 1969 ex.s. c 145 § 37.]

16.49A.380 Director may prescribe regulations for storage and handling of meats and meat food products. The director may by regulations prescribe conditions under which carcasses, parts of carcasses, and meat food products of meat food animals capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, whenever the director deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is an infraction punishable under RCW 16.49A.630. [1969 ex.s. c 145 § 38.]

16.49A.390 Meat food or products for nonhuman consumption—Restrictions. Inspection shall not be provided under this chapter at any establishment for the slaughter of meat food animals or the preparation of any carcasses or parts or products of such animals, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the director to deter their use for human food. No person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, meat or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the director or are naturally inedible by humans. [1969 ex.s. c 145 § 39.]

16.49A.400 Facilities, records, inventories to be open to inspection and sampling. (1) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions

involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the director, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(a) Any persons, firms, or corporations that engage, for intrastate commerce, in the business of slaughtering any meat food animals, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(b) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers or otherwise), or transporting in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any such animals;

(c) Any persons, firms, or corporations that engage in business, in or for intrastate commerce, as renderers, or engage in the business of buying, selling, or transporting, in intrastate commerce, or importing, any dead, dying, disabled, or diseased meat food animals or parts of the carcasses of any such animals that have died otherwise than by slaughter.

(2) Any record required to be maintained by this chapter shall be maintained for such period of time as the director may by regulations prescribe. [1969 ex.s. c 145 § 40.]

16.49A.410 Designation of time for slaughter for inspection purposes. Whenever the director shall deem it necessary in order to furnish proper, efficient and economical inspection of two or more establishments and the proper inspection of meat food animals or meat, the director, after a hearing on written notice to the licensee of each such establishment affected, may designate days and hours for the slaughter of meat food animals and the preparation or processing of meat at such establishments. The director in making such designation of days and hours shall give consideration to the existing practices at the affected establishment fixing the time for slaughter of meat food animals and the preparation or processing of meat thereof. [1969 ex.s. c 145 § 41.]

16.49A.420 Disposition of adulterated or misbranded carcass, meat or meat food product when away from preparing establishment—Declared public nuisance. The director, whenever he finds any carcass, part thereof, meat or meat food product subject to the provisions of this chapter away from the establishment where such carcass, part thereof, meat or meat food product was prepared or anywhere in intrastate commerce, that is adulterated or misbranded, shall render such meat or meat food product unsalable or shall order the destruction of such carcass, part thereof, meat or meat food product which are hereby declared to be a public nuisance. [1969 ex.s. c 145 § 42.]

16.49A.430 Adulterated or misbranded products—Embargo. The director may, when he finds or has probable cause to believe that any carcass, part thereof, meat or meat food product subject to the provisions of this chapter which has been or may be introduced into intrastate commerce and such carcass, part thereof, meat or meat food product is so adulterated or misbranded that its embargo is necessary to protect the public from injury, affix on such carcass, part thereof, meat or meat food product a notice of its embargo prohibiting its sale or movement in intrastate commerce without a release from the director. The director shall subsequent to embargo, if he finds that such carcass, part thereof, meat or meat food product is not adulterated or misbranded so as to be in violation of this chapter, remove such embargo forthwith. [1969 ex.s. c 145 § 43.]

16.49A.440 Embargoed products—Petition to superior court—Hearing—Order—Costs. When the director has embargoed any carcass, part thereof, meat or meat food product, he shall petition the superior court of the county in which such carcass, part thereof, meat or meat food product is located without delay and within twenty days for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after a prompt hearing to any claimant of such carcass, part thereof, meat or meat food product, shall issue an order which directs the removal of such embargo or the destruction or the correction and release of such carcass, part thereof, meat or meat food product. An order for destruction or correction and release shall contain such provisions for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond, as the court finds indicated in the circumstance. [1969 ex.s. c 145 § 44.]

16.49A.450 Embargoed products—Claimant may agree to disposition of products without petition to court. The director need not petition the superior court as provided for in RCW 16.49A.440, if the owner or the claimant of such carcass, part thereof, meat or meat food product agrees in writing to the disposition of such carcass, part thereof, meat or meat food product as the director may order. [1969 ex.s. c 145 § 45.]

16.49A.460 Embargoed products—Consolidation of petitions. Two or more petitions under RCW 16.49A.440, which pend at the same time and which present the same issue and claimant hereunder, may be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1969 ex.s. c 145 § 46.]

16.49A.470 Embargoed products—Claimant entitled to sample of article. The claimant in any proceeding by petition under RCW 16.49A.440 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1969 ex.s. c 145 § 47.]

16.49A.480 Damages from administrative action. No state court shall allow the recovery of damages from administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1969 ex.s. c 145 § 48.]

16.49A.520 Inspectors—Duties. The director shall employ inspectors to make examination and inspection of all meat food animals, the inspection of which is provided for under the provisions of this chapter, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this chapter and by the rules and regulations to be prescribed by the director, and said director shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this chapter, and all inspections and examinations made under this chapter shall be such and made in such manner as described in the rules and regulations prescribed by said director not inconsistent with provisions of this chapter. [1969 ex.s. c 145 § 55.]

16.49A.530 Department's authority to withdraw inspectors from unsanitary establishments. The provisions of RCW 16.49A.270 through 16.49A.290 shall in no way limit the department's authority to forthwith withdraw inspection at any facility or establishment subject to the provisions of this chapter when the department through its inspectors determines that such facility or establishment is unsanitary and that the carcasses or parts thereof, meat or meat food products prepared therein would be adulterated because of such unsanitary conditions. [1969 ex.s. c 145 § 52.]

16.49A.540 Overtime inspection service—Payment for. Costs for any overtime inspection service requested or required by a license shall be charged to said licensee at the actual cost to the department including supervisor cost. Charges for such overtime inspection shall be due and payable by the licensee to the department by the end of the next business day. The director may withhold inspection at any establishment or facility operated by such licensee until proper payment has been made by the licensee as herein required. The director may further require that payment for overtime costs be made in advance if such licensee does not make proper payment for overtime inspection services. [1969 ex.s. c 145 § 57.]

16.49A.550 Intergovernmental cooperation. The director may in order to carry out the purpose of this chapter enter into agreements with any federal, state or other governmental unit for joint inspection programs or for the receipt of moneys from such federal, state or other governmental units in carrying out the purpose of this chapter. [1969 ex.s. c 145 § 59.]

16.49A.560 Adoption of regulations promulgated under federal meat inspection act. The regulations promulgated under the provisions of the federal meat inspection act (21 USC 601 et seq.) and not in conflict with the provisions of this chapter are hereby adopted as regulations applicable under the provisions of this chapter. [1971 ex.s. c 108 § 1; 1969 ex.s. c 145 § 54.]

16.49A.570 Uniformity of state and federal acts and regulations as purpose—Procedure. The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal meat inspection act 21 USC 601 et seq., and regulations adopted thereunder.

In accord with such purpose any regulations adopted under the federal meat inspection act and published in the federal register shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.05 RCW as enacted or hereafter amended. The director shall, however, within thirty days of the publication of the adoption of any such regulation under the federal meat inspection act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW, as enacted or hereafter amended, concerning the adoption of regulations. [1971 ex.s. c 108 § 2; 1969 ex.s. c 145 § 60.]

16.49A.580 Continuation of prior licenses. Any license issued under the provisions of chapter 16.49 RCW and expiring December 31, 1969, shall continue in effect until June 30, 1970, without the need of renewal. [1969 ex.s. c 145 § 58.]

16.49A.590 Disposition of moneys. All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1969 ex.s. c 145 § 61.]

16.49A.600 Exemptions. The provisions of this chapter including licensing and those requiring inspection of the slaughter of meat food animals and the preparation of carcasses or parts thereof, meat or meat food products shall not apply to operations of the types traditionally and usually conducted by a retail meat dealer at retail stores and restaurants, when conducted at any retail store or restaurant or similar type establishment for sale in normal retail quantities or service of such articles to ultimate consumers at such establishment. Normal retail quantities or service of such articles to consumers shall be as defined in regulations adopted under the provisions of this chapter. [1971 ex.s. c 108 § 3; 1969 ex.s. c 145 § 68.]

16.49A.610 Governmental units' authority to license, inspect and/or prohibit sale of meat or meat food products. This chapter shall in no manner be construed to deny or limit the authority of any governmental unit to license and carry on the necessary inspection of meat food animal carcasses or parts thereof, meat or meat food products distribution facilities and equipment of retail meat distributors, selling, offering for sale, holding for sale or trading, delivering or bartering meat within such governmental unit's jurisdiction and/or to prohibit the sale of meat food animal carcasses or parts thereof, meat or meat food products within its jurisdiction when such meat food animal carcasses or parts thereof, meat or meat food products are

adulterated or distributed under unsanitary conditions. [1969 ex.s. c 145 § 69.]

16.49A.620 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on August 11, 1969. [1969 ex.s. c 145 § 62.]

16.49A.630 Penalty. Any person violating any provisions of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and shall be guilty of a gross misdemeanor for any second or subsequent violation: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 145 § 63.]

16.49A.640 Rules and regulations subject to administrative procedure act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1969 ex.s. c 145 § 53.]

16.49A.650 Continuation of rules adopted pursuant to repealed chapter. The repeal of chapter 16.49 RCW (Meat Inspection Act) and the enactment of this chapter shall not be deemed to have repealed any rules adopted under chapter 16.49 RCW not in conflict with the provisions of this chapter and relating to custom farm slaughterers, and custom slaughtering establishments. For the purpose of this chapter, it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to chapter 34.05 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this chapter shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended, concerning the adoption of rules. [1969 ex.s. c 145 § 56.]

16.49A.900 Portions of chapter conflicting with federal requirements—Construction. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the department, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the department, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the department. [1969 ex.s. c 145 § 70.]

16.49A.910 Severability—1969 ex.s. c 145. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 145 § 66.]

16.49A.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 ex.s. c 145 § 65.]

Chapter 16.50
HUMANE SLAUGHTER OF LIVESTOCK

Sections

16.50.100 Declaration of policy. The legislature of the state of Washington finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economy in slaughtering operations; and produces other benefits for producers, processors and consumers which tend to expedite the orderly flow of livestock and their products. It is therefore declared to be the policy of the state of Washington to require that the slaughter of all livestock, and the handling of livestock in connection with slaughter, shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those authorized by the Federal Humane Slaughter Act of 1958, and regulations thereunder. [1967 c 31 § 1.]

16.50.110 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Humane method" means either: (a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or (b) a method in accordance with the ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(4) "Livestock" means cattle, calves, sheep, swine, horses, mules and goats.

(5) "Packer" means any person engaged in the business of slaughtering livestock.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association and every officer, agent or employee, thereof. This term shall import either the singular or plural, as the case may be.

(7) "Slaughterer" means any person engaged in the commercial or custom slaughtering of livestock, including custom farm slaughterers. [1967 c 31 § 2.]

16.50.120 Humane methods for bleeding or slaughtering livestock required. No slaughterer or packer shall bleed or slaughter any livestock except by a humane method: PROVIDED, That the director may, by administrative order, exempt a person from compliance with this chapter for a period of not to exceed six months if he finds that an earlier compliance would cause such person undue hardship. [1967 c 31 § 3.]

16.50.130 Administration of chapter—Rules. The director shall administer the provisions of this chapter. He shall adopt and may from time to time revise rules which shall conform substantially to the rules and regulations promulgated by the secretary of agriculture of the United States pursuant to the Federal Humane Slaughter Act of 1958, Public Law 85-765, 72 Stat. 862 and any amendments thereto. Such rules shall be adopted pursuant to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules. [1967 c 31 § 4.]

16.50.140 Manually operated hammer, sledge or poleaxe—Declared inhumane. The use of a manually operated hammer, sledge or poleaxe is declared to be an inhumane method of slaughter within the meaning of this chapter. [1967 c 31 § 5.]

16.50.150 Religious freedom—Ritual slaughter defined as humane. Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provisions of this chapter, ritual slaughter and the handling or other preparation of livestock for ritual slaughter is defined as humane. [1967 c 31 § 10.]

16.50.160 Injunctions against violations. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of the other remedies at law. [1967 c 31 § 6.]

16.50.170 Penalty for violations. Any person violating any provision of this chapter or of any rule adopted hereunder is guilty of a misdemeanor and subject to a fine of not more than two hundred fifty dollars or confinement in the county jail for not more than ninety days. [1967 c 31 § 7.]

16.50.900 Severability—1967 c 31. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 31 § 9.]

Chapter 16.52
PREVENTION OF CRUELTY TO ANIMALS

Sections

Cruelty to stock in transit: RCW 81.56.120.

Pet animals—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

16.52.010 Definitions. In RCW 16.52.010 through 16.52.055, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 the singular shall include the plural; the word "animal" shall be held to include every living creature, except man; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as of such agents or employees. [1901 c 146 § 17; RRS § 3200.]

16.52.020 Humane societies. Any citizens of the state of Washington who have heretofore, or who shall hereafter, incorporate as a body corporate, under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may avail themselves of the

privileges of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180: PROVIDED, That the legislative authority in each county may grant exclusive authority to exercise the privileges and authority granted by this section to one or more qualified corporations for a period of up to three years based upon ability to fulfill the purposes of this chapter. [1973 1st ex.s. c 125 § 1; 1901 c 146 § 1; RRS § 3184.]

16.52.030 Society members as peace officers—Powers and duties. All members and agents, and all officers of any society so incorporated, as shall by the trustees of such society be duly authorized in writing, approved by any judge of the superior court of the county, and sworn in the same manner as are constables and peace officers, shall have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any animal and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 in the same manner as herein provided for other officers; and may carry the same weapons that such officers are authorized to carry. Authorizations under this section shall be for a period not exceeding three years or termination of duties, whichever occurs first. The trustees of the society shall review the authorizations every three years and may revoke authorizations at any time by filing a certified revocation with the superior court from which the authorization was issued: PROVIDED, That all such members and agents shall, when making arrests under this section, exhibit and expose a suitable badge to be adopted by such society. All persons resisting such specially authorized, approved and sworn officers, agents or members shall be guilty of a misdemeanor. [1982 c 114 § 2; 1901 c 146 § 2; RRS § 3185.]

16.52.040 Prosecutions by society members. Any member of such society authorized as provided in RCW 16.52.030, may appear and prosecute in any court of competent jurisdiction for any violation of any of the provisions of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180, whether or not he be an attorney or counsellor at law: PROVIDED, That all such prosecution shall be conducted in the name of the people of the state of Washington. [1901 c 146 § 14; RRS § 3197.]

16.52.050 Complaint—Search warrant—Arrest. When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any of the provisions of law relating to or in any way affecting animals, are being or are about to be violated in any particular building or place, such magistrates shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated society qualified as provided in RCW 16.52.030, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating or attempting to violate any law relating to or in any way affecting animals, and to bring such person or persons before some court or magistrate of competent jurisdiction within the city or county within which such offense has been committed or attempted to be committed, to be dealt with according to law. [1901 c 146 § 10; RRS § 3193.]

16.52.055 Certain officers empowered to make arrests for violations. All sheriffs, constables, police and peace officers are empowered to make arrests for the violation of any provisions of RCW 16.52.010 through 16.52.055, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180, as in other cases of misdemeanor. [1901 c 146 § 3; RRS § 3186.]

16.52.060 Arrest without warrant. Any judge, sheriff, deputy, or police officer may arrest any person found committing any of the acts enumerated in RCW 16.52.065 or 81.56.120, without a warrant for such arrest, and any officer or member of any humane society, or society for the prevention of cruelty to animals, may cause the immediate arrest of any person engaged in, or who shall have committed such cruelties, upon making oral complaint to any sheriff, deputy, or police officer, or such officer or member of such society may himself or herself arrest any person found perpetrating any of the cruelties herein enumerated: PROVIDED, That said person making such oral complaint or making such arrest shall file with a proper officer a written complaint, stating the act or acts complained of, within twenty-four hours, excluding Sundays and legal holidays, after such arrest shall have been made. [1987 c 202 § 182; 1893 c 27 § 9; RRS § 3204.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.52.065 Wanton cruelty to fowls. Whosoever shall wantonly or cruelly pluck, maim, torture, deprive of necessary food or drink, or wantonly kill any fowl or insectivorous bird, shall be deemed guilty of a misdemeanor. [1982 c 114 § 3; 1893 c 27 § 8; RRS § 3203. Formerly RCW 16.52.170.]

16.52.070 Certain acts as cruelty—Penalty. Except as provided in RCW 9A.48.080, every person who cruelly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills, or causes, procures, authorizes, requests or encourages so to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten or mutilated or cruelly killed, any animal; and whoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the same, or unnecessarily fails to provide the same with the proper food, drink, air, light, space, shelter or protection from the weather, or who wilfully and unreasonably drives the same when unfit for labor or with yoke or harness that chafes or galls it, or check rein or any part of its harness too tight for its comfort, or at night when it has been six consecutive hours without a full meal, or who cruelly abandons any animal, shall be guilty of a misdemeanor. For the purposes of this section, necessary sustenance or proper food means the

provision at suitable intervals, not to exceed twenty-four hours, of wholesome foodstuff suitable for the species and age of the animal and sufficient to provide a reasonable level of nutrition for the animal. [1982 c 114 § 4; 1979 c 145 § 4; 1901 c 146 § 4; RRS § 3187. Prior: 1893 c 27 § 2, part; Code 1881 § 930, part; 1873 p 211 § 133; 1869 p 227 § 127; 1854 p 97 § 121.]

16.52.080 Transporting or confining in unsafe manner—Penalty. Any person who wilfully transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody or be subject to arrest pursuant to a valid warrant therefor by any officer or authorized person, such officer or person may take charge of the animal or animals; and any necessary expense thereof shall be a lien thereon to be paid before the animal or animals may be recovered; and if the expense is not paid, it may be recovered from the owner of the animal or the person guilty. [1982 c 114 § 5; 1974 ex.s. c 12 § 1; 1901 c 146 § 5; RRS § 3188. Prior: 1893 c 27 § 2, part; Code 1881 § 930, part.]

Cruelty to stock in transit: RCW 81.56.120.

16.52.085 Removal of neglected animals for feeding and restoration to health—Examination—Notice—Return—Nonliability. (1) If the county sheriff or other law enforcement officer shall find that said domestic animal has been neglected by its owner, he or she may authorize the removal of the animal to a proper pasture or other suitable place for feeding and restoring to health.

(2) If a law enforcement officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of an allegedly neglected domestic animal by a veterinarian to determine whether the level of neglect is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed to a suitable place pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. In making the decision to remove an animal pursuant to this chapter, the law enforcement officer shall make a good faith effort to contact the animal's owner before removal unless the animal is in a life-threatening condition or unless the officer reasonably believes that the owner would remove the animal from the jurisdiction.

(4) If no criminal case is filed within seventy-two hours of the removal of the animal, the owner may petition the district court of the county where the removal of the animal occurred for the return of the animal. The petition shall be filed with the court, with copies served to the law enforcement agency responsible for removing the animal and to the prosecuting attorney. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(5) In a motion or petition for the return of the removed animal before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect and is not in need of being restored to health.

(6) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action. [1987 c 335 § 1; 1974 ex.s. c 12 § 2.]

Construction—1987 c 335: "Nothing in this act shall be construed as expanding or diminishing, in any manner whatsoever, any authority granted officers under RCW 16.52.020 or 16.52.030." [1987 c 335 § 6.]

Severability—1987 c 335: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 335 § 7.]

16.52.090 Docking horses—Misdemeanor. Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the carriage thereof, shall be guilty of a misdemeanor. [1901 c 146 § 6; RRS § 3189. FORMER PART OF SECTION: Code 1881 § 840; 1871 p 103 § 1; RRS § 3206, now codified as RCW 16.52.095.]

16.52.095 Cutting ears—Misdemeanor. It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal such as an ox, cow, bull, calf, sheep, goat or hog, and any person cutting off more than one-half of the ear or ears of any such animals, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum less than twenty dollars. [Code 1881 § 840; 1871 p 103 § 1; RRS § 3206. Formerly RCW 16.52.090, part.]

16.52.100 Confinement without food and water—Intervention by others. Any person who shall impound or confine or cause to be impounded or confined any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof shall be guilty of a misdemeanor. In case any domestic animal shall be impounded or confined as aforesaid and shall continue to be without necessary food and water for more than twenty-four consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary to enter into and open any pound or place of confinement in which any domestic animal shall be confined, and supply it with necessary food and water so long as it shall be confined. Such person shall not be liable to action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall be subject to attachment therefor and shall not be exempt from levy and sale upon execution issued upon a judgment therefor. If an investigating officer finds it extremely difficult to supply such animals with food and water, the officer may remove the animals to protective custody for that purpose. [1982 c 114 § 6; 1901 c 146 § 12; RRS § 3195.]

16.52.110 Old or diseased animals at large. Every owner, driver, or possessor of any old, maimed or diseased horse, cow, mule, or other domestic animal, who shall permit

the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: PROVIDED, That this shall not apply to any such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm or crippled horse, ox, mule, cow or other domestic animal, which shall be abandoned on the public highway, or in any open or enclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment. [1901 c 146 § 13; RRS § 3196.]

16.52.113 Causing animals to fight—Injuring animals—Presence at event. Any person who for amusement or gain causes any bull, bear, or other animal except a dog to fight with an animal of like kind, or causes any such animal, including dogs, to fight with a different kind of animal; or who for amusement or gain injures any bull, bear, dog, or other animal, or causes any bull, bear, or other animal except a dog to worry or injure another such animal; and any person who permits any of these acts to be done on any premises under his charge or control or who aids, abets, or is present at such fighting, chasing, or worrying of such animal is guilty of a misdemeanor. [1982 c 114 § 8.]

16.52.117 Dog fighting—Owners, trainers, spectators—Exceptions. (1) Any person who does any of the following is guilty of a gross misdemeanor punishable by imprisonment not to exceed one year, or by a fine not to exceed five thousand dollars, or by both fine and imprisonment:

(a) Owns, possesses, keeps, or trains any dog with the intent that the dog shall be engaged in an exhibition of fighting with another dog;

(b) For amusement or gain causes any dog to fight with another dog, or causes any dogs to injure each other; or

(c) Permits any act in violation of (a) or (b) of this subsection to be done on any premises under his charge or control, or aids or abets any such act.

(2) Any person who is knowingly present, as a spectator, at any place or building where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at such preparations, or is knowingly present at such exhibition or at any other fighting or injuring as described in subsection (1)(b) of this section, with the intent to be present at such exhibition, fighting, or injuring, is guilty of a misdemeanor.

(3) Nothing in this section may prohibit the following:

(a) The use of dogs in the management of livestock, as defined by chapter 16.57 RCW, by the owner of the livestock or the owner's employees or agents or other persons in lawful custody of the livestock;

(b) The use of dogs in hunting as permitted by law; or

(c) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law. [1982 c 114 § 9.]

16.52.120 Cockfighting. Every person who wantonly or for the amusement of himself or others, or for gain, shall cause any cock to fight, chase, worry or injure any other animal, or to be fought, chased, worried or injured by any person or animal, and every person who shall permit the same to be done on any premises under his charge or control; and every person who shall aid, abet, or be present at such fighting, chasing, worrying or injuring of such animal as a spectator, shall be guilty of a misdemeanor. [1982 c 114 § 11; 1901 c 146 § 7; RRS § 3190.]

16.52.130 Training birds to fight—Attending exhibitions. Every person who owns, possesses, keeps, or trains any bird with the intent that such bird shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where training is being had or preparations are being made for the fighting of birds, with the intent to be present at such exhibition, or is present at such exhibition, shall be guilty of a misdemeanor. [1982 c 114 § 12; 1901 c 146 § 8; RRS § 3191.]

16.52.140 Arrest without warrant. Any person qualified under RCW 16.52.030 and any sheriff, constable, police or peace officer may enter any place, building or tenement, where there is an exhibition of the fighting of birds or animals or where preparations are being made or training had for such exhibition, and without a warrant arrest all or any persons there present and bring them before some court or magistrate of competent jurisdiction to be dealt with according to law. [1901 c 146 § 11; RRS § 3194.]

16.52.160 Punishment—Attempt as a misdemeanor. Every person who shall attempt to do any act or thing which by RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 is made a misdemeanor shall be guilty of a misdemeanor. [1901 c 146 § 9; RRS § 3192. FORMER PART OF SECTION: 1901 c 146 § 16; RRS § 3199, now codified as RCW 16.52.165.]

16.52.165 Punishment—Conviction of misdemeanor. Every person convicted of any misdemeanor under RCW 16.52.080 or 16.52.090 shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution. [1982 c 114 § 7; 1901 c 146 § 16; RRS § 3199. Formerly RCW 16.52.160, part.]

16.52.180 Limitations on application of chapter. No part of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 shall be deemed to interfere with any of the laws of this state known as the "game laws," nor shall RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated college or

university of the state of Washington. [1901 c 146 § 18; RRS § 3201.]

16.52.185 Exclusions from chapter. Nothing in this chapter applies to accepted husbandry practices used in the commercial raising or slaughtering of livestock or poultry, or products thereof or to the use of animals in the normal and usual course of rodeo events. [1982 c 114 § 10.]

16.52.190 Poisoning animals. It shall be unlawful for any person to wilfully or maliciously poison any domestic animal or domestic bird: PROVIDED, That the provisions of this section shall not apply to the killing by poison such animal or bird in a lawful and humane manner by the owner thereof, or by a duly authorized servant or agent of such owner, or by a person acting pursuant to instructions from a duly constituted public authority. [1941 c 105 § 1; RRS § 3207-1. Formerly RCW 16.52.150, part.]

16.52.193 Poisoning animals—Strychnine sales—Records—Report on suspected purchases. It shall be unlawful for any person other than a registered pharmacist to sell at retail or furnish to any person any strychnine: PROVIDED, That nothing herein shall prohibit county, state or federal agents, in the course of their duties, from furnishing strychnine to any person. Every such registered pharmacist selling or furnishing such strychnine shall, before delivering the same, record the transaction as provided in RCW 69.38.030. If any such registered pharmacist shall suspect that any person desiring to purchase strychnine intends to use the same for the purpose of poisoning unlawfully any domestic animal or domestic bird, he may refuse to sell to such person, but whether or not he makes such sale, he shall if he so suspects an intention to use the strychnine unlawfully, immediately notify the nearest peace officer, giving such officer a complete description of the person purchasing, or attempting to purchase, such strychnine. [1987 c 34 § 7; 1941 c 105 § 2; Rem. Supp. 1941 § 3207-2. Formerly RCW 18.67.110.]

16.52.195 Poisoning animals—Penalty. Any person violating any of the provisions of RCW 16.52.190 or 16.52.193 shall be guilty of a gross misdemeanor. [1941 c 105 § 3; RRS § 3207-3. Formerly RCW 16.52.150, part.]

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty. (1) The sentence imposed for a violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the cruel treatment to have been severe and likely to reoccur. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years. The court may delay its decision on forfeiture under this subsection until the end of the probationary period.

(4) In addition to fines and court costs, the owner, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by the law enforcement or authorized private or public entities involved with the care of the animals.

(5) If convicted, the owner shall also pay a civil penalty of one hundred dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial. [1987 c 335 § 2.]

Construction—Severability—1987 c 335: See notes following RCW 16.52.085.

16.52.210 Destruction of animal by law enforcement officer—Immunity from liability. This chapter shall not limit the right of a law enforcement officer to destroy an animal that has been seriously injured and would otherwise continue to suffer. Such action shall be undertaken with reasonable prudence and, whenever possible, in consultation with a licensed veterinarian and the owner of the animal.

Law enforcement officers and licensed veterinarians shall be immune from civil and criminal liability for actions taken under this chapter if reasonable prudence is exercised in carrying out the provisions of this chapter. [1987 c 335 § 3.]

Construction—Severability—1987 c 335: See notes following RCW 16.52.085.

16.52.220 Transfers of mammals for research—Certification requirements—Pet animals. (1) All transfers of mammals, other than rats and mice bred for use in research and livestock, to research institutions in this state, whether by sale or otherwise, shall conform with federal laws and, except as to those animals obtained from a source outside the United States, shall be accompanied by one of the following written certifications, dated and signed under penalty of perjury:

(a) Breeder certification: A written statement certifying that the person signing the certification is a United States department of agriculture-licensed class A dealer whose business license in the state of Washington includes only those animals that the dealer breeds and raises as a closed or stable colony and those animals that the dealer acquires for the sole purpose of maintaining or enhancing the dealer's breeding colony, that the animal being sold is one of those animals, and that the person signing the certification is authorized to do so. The certification shall also include an identifying number for the dealer, such as a business license number.

(b) True owner certification: A written statement certifying that the animal being transferred is owned by the person signing the certification, and that the person signing the certification either (i) has no personal knowledge or reason to believe that the animal is a pet animal, or (ii) consents to having the animal used for research at a research institution. The certification shall also state the date that the

owner obtained the animal, and the person or other source from whom it was obtained. The certification shall also include an identifying number for the person signing the certification, such as a drivers' license number or business license number. The certifications signed by or on behalf of a humane society, animal control agency, or animal shelter need not contain a statement that the society, agency, or shelter owns the animal, but shall state that the animal has been in the possession of the society, agency, or shelter for the minimum period required by law that entitles it to legally dispose of the animal.

(2) In addition to the foregoing certification, all research institutions in this state shall open at the time a dog or cat is transferred to it a file that contains the following information for each dog or cat transferred to the institution:

(a) All information required by federal law;

(b) The certification required by this section; and

(c) A brief description of the dog or cat (e.g. breed, color, sex, any identifying characteristics), and a photograph of the dog or cat.

The brief description may be contained in the written certification.

These files shall be maintained and open for public inspection for a period of at least two years from the date of acquisition of the animal.

(3) All research institutions in this state shall, within one hundred eighty days of May 12, 1989, adopt and operate under written policies governing the acquisition of animals to be used in biomedical or product research at that institution. The written policies shall be binding on all employees, agents, or contractors of the institution. These policies must contain, at a minimum, the following provisions:

(a) Animals shall be acquired in accordance with the federal animal welfare act, public health service policy, and other applicable statutes and regulations;

(b) No research may be conducted on a pet animal without the written permission of the pet animal's owner;

(c) Any animal acquired by the institution that is determined to be a pet animal shall be returned to its legal owner, unless the institution has the owner's written permission to retain the animal; and

(d) A person at the institution shall be designated to have the responsibility for investigating any facts supporting the possibility that an animal in the institution's possession may be a pet animal, including any inquiries from citizens regarding their pets. This person shall devise and insure implementation of procedures to inform inquiring citizens of their right to prompt review of the relevant files required to be kept by the institution for animals obtained under subsection (2) of this section, and shall be responsible for facilitating the rapid return of any animal determined to be a pet animal to the legal owner who has not given the institution permission to have the animal or transferred ownership of it to the institution.

(4) For the purposes of this section, "research institution" means any facility licensed by the United States department of agriculture to use animals in biomedical or product research. [1989 c 359 § 3.]

Application of consumer protection act: RCW 19.86.145.

16.52.230 Remedies not impaired. No provision of RCW 9.08.070 or 16.52.220 shall in any way interfere with or impair the operation of any other provision of this chapter or Title 28B RCW, relating to higher education or biomedical research. The provisions of RCW 9.08.070 and 16.52.220 are cumulative and nonexclusive and shall not affect any other remedy. [1989 c 359 § 5.]

16.52.300 Dogs or cats used as bait—Penalties. (1) Any person who uses domestic dogs or cats as bait, prey, or targets for the purpose of training dogs or other animals to track, fight, or hunt, in such a fashion as to torture, torment, deprive of necessary sustenance, cruelly beat, or mutilate such animals, shall be guilty of a misdemeanor.

(2) Any person who violates the provisions of subsection (1) of this section, and whose actions result in the death of the animal, shall be guilty of a gross misdemeanor.

(3) Any person who captures by trap a domestic dog or cat to be used as bait, prey, or targets for the purpose of training dogs or other animals to track, fight, or hunt, in such a fashion as to torture, torment, deprive of necessary sustenance, cruelly beat, or mutilate such animals, shall be guilty of a misdemeanor.

(4) Any person who violates the provisions of subsection (3) of this section, and whose actions result in the death of the animal, shall be guilty of a gross misdemeanor.

(5) If a person violates this section, law enforcement authorities shall seize and hold the animals being trained. Such animals shall be disposed of by the court pursuant to the provisions of RCW 16.52.200(3).

(6) This section shall not in any way interfere with or impair the operation of any provision of Title 28B RCW, relating to higher education or biomedical research. [1990 c 226 § 1.]

Chapter 16.54
ABANDONED ANIMALS

Sections

16.54.010 When deemed abandoned. An animal is deemed to be abandoned under the provisions of this chapter when it is placed in the custody of a veterinarian, boarding kennel owner, or any person for treatment, board, or care and:

(1) Having been placed in such custody for an unspecified period of time the animal is not removed within fifteen days after notice to remove the animal has been given to the person who placed the animal in such custody or having been so notified the person depositing the animal refuses or fails to pay agreed upon or reasonable charges for the treatment, board, or care of such animal, or;

(2) Having been placed in such custody for a specified period of time the animal is not removed at the end of such specified period or the person depositing the animal refuses to pay agreed upon or reasonable charges for the treatment, board, or care of such animal. [1977 ex.s. c 67 § 1; 1955 c 190 § 1.]

16.54.020 Disposition of abandoned animal by person having custody. Any person having in his care, custody, or control any abandoned animal as defined in RCW 16.54.010, may deliver such animal to any humane society having facilities for the care of such animals or to any pound maintained by or under contract or agreement with any city or county within which such animal was abandoned. If no such humane society or pound exists within the county the person with whom the animal was abandoned may notify the sheriff of the county wherein the abandonment occurred. [1955 c 190 § 2.]

16.54.030 Duty of sheriff—Sale—Disposition of proceeds. It shall be the duty of the sheriff of such county upon being so notified, to dispose of such animal as provided by law in reference to estrays if such law is applicable to the animal abandoned, or if not so applicable then such animal shall be sold by the sheriff at public auction. Notice of any such sale shall be given by posting a notice in three public places in the county at least ten days prior to such public sale. Proceeds of such sale shall be paid to the county treasurer for deposit in the county general fund. [1955 c 190 § 3.]

Chapter 16.57
IDENTIFICATION OF LIVESTOCK

Sections

16.57.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or a duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, poultry and rabbits.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Brand inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides and/or the application of any artificial identification such as back tags or ear clips necessary to preserve the identity of the livestock or livestock hides examined.

(8) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(9) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse. [1989 c 286 § 22; 1981 c 296 § 15; 1979 c 154 § 17; 1967 c 240 § 34; 1959 c 54 § 1.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.04.020.

Severability—1979 c 154: See note following RCW 15.49.330.

16.57.020 Recording brands—Fee. The director shall be the recorder of livestock brands and such brands shall not be recorded elsewhere in this state. Any person desiring to register a livestock brand shall apply on a form prescribed by the director. Such application shall be

accompanied by a facsimile of the brand applied for and a twenty-five dollar recording fee. The director shall, upon his satisfaction that the application meets the requirements of this chapter and/or rules and regulations adopted hereunder, record such brand. [1971 ex.s. c 135 § 1; 1965 c 66 § 1; 1959 c 54 § 2.]

16.57.030 Tattoo brands and marks not recordable—Validation of prior recordings. The director shall not record tattoo brands or marks for any purpose subsequent to the enactment of this chapter. However, all tattoo brands and marks of record on the date of the enactment of this chapter shall be recognized as legal ownership brands or marks. [1959 c 54 § 3.]

16.57.040 Production record brands. The director may provide for the use of production record brands. Numbers for such brands shall be issued at the discretion of the director and shall be placed on livestock immediately below the registered ownership brand or any other location prescribed by the director. [1974 ex.s. c 64 § 1; 1959 c 54 § 4.]

16.57.050 Use of unrecorded brand prohibited. No person shall place a brand on livestock for any purpose unless such brand is recorded in his name. [1959 c 54 § 5.]

16.57.060 Brands similar to governmental brands not to be recorded. No brand shall be recorded for ownership purposes which will be applied in the same location and is similar or identical to a brand used or reserved for ownership or health purposes by a governmental agency or the agent of such an agency. [1959 c 54 § 6.]

16.57.070 Conflicting claims to brand. The director shall determine conflicting claims between applicants to a brand, and in so doing shall consider the priority of applicants. [1959 c 54 § 7.]

16.57.080 Schedule for renewal of registered brands. The director shall establish by rule a schedule for the renewal of registered brands. The fee for renewal of the brands shall be twenty-five dollars for each two-year period of brand ownership, except that the director may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis. At least one hundred twenty days before the expiration of a registered brand, the director shall notify by letter the owner of record of the brand that on the payment of the requisite application fee and application of renewal the director shall issue the proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent registration period. The failure of the registered owner to pay the renewal fee by the date required by rule shall cause such owner's brand to revert to the department. The director may for a period of one year following such reversion, reissue such brand only to the prior registered owner upon payment of twenty-five dollars and an additional fee of ten dollars for renewal subsequent to the regular renewal period. The director may at his discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant. [1991 c 110 § 1; 1974 ex.s. c 64 § 2; 1971 ex.s. c 135 § 2; 1965 c 66 § 3; 1961 c 148 § 1; 1959 c 54 § 8.]

16.57.090 Brand is personal property—Instruments affecting title, recording, effect—Nonliability of director for agents. A brand is the personal property of the owner of record. Any instrument affecting the title of such brand shall be acknowledged in the presence of the recorded owner and a notary public. The director shall record such instrument upon presentation and payment of a ten dollar recording fee. Such recording shall be constructive notice to all the world of the existence and conditions affecting the title to such brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of his agents to properly record such instrument. [1974 ex.s. c 64 § 3; 1965 c 66 § 2; 1959 c 54 § 9.]

16.57.100 Right to use brand—Brand as evidence of title. The right to use a brand shall be evidenced by the original certificate issued by the director showing that the brand is of present record or a certified copy of the record of such brand showing that it is of present record. A healed brand of record on livestock shall be prima facie evidence that the recorded owner of such brand has legal title to such livestock and is entitled to its possession: PROVIDED, That the director may require additional proof of ownership of any animal showing more than one healed brand. [1971 ex.s. c 135 § 3; 1959 c 54 § 10.]

16.57.105 Preemptory right to use brand. Any person having a brand recorded with the department shall have a preemptory right to use such brand and its design under any newly approved method of branding adopted by the director. [1967 c 240 § 38.]

16.57.110 Size and characteristics of brand. No brand shall be placed on livestock that is not permanent in nature and of a size that is not readily visible. The director, in order to assure that brands are readily visible, may prescribe the size of branding irons to be used for ownership brands. [1959 c 54 § 11.]

16.57.120 Removal or alteration of brand—Penalty. No person shall remove or alter a brand of record on livestock without first having secured the written permission of the director. Violation of this section shall be a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 110 § 2; 1959 c 54 § 12.]

16.57.130 Similar brands not to be recorded. The director shall not record a brand that is identical to a brand of present record; nor a brand so similar to a brand of present record that it will be difficult to distinguish between such brands when applied to livestock. [1959 c 54 § 13.]

16.57.140 Certified copy of record of brand—Fee. The owner of a brand of record may procure from the director a certified copy of the record of his brand upon payment of five dollars. [1974 ex.s. c 64 § 4; 1959 c 54 § 14.]

16.57.150 Brand book. The director shall publish a book to be known as the "Washington State Brand Book", showing all the brands of record. Such book shall contain the name and address of the owners of brands of record and a copy of the brand laws and regulations. Supplements to such brand book showing newly recorded brands, amendments or newly adopted regulations, shall be published biennially, or prior thereto at the discretion of the director: PROVIDED, That whenever he deems it necessary, the director may issue a new brand book. [1974 ex.s. c 64 § 5; 1959 c 54 § 15.]

16.57.160 Cattle—Mandatory brand inspection points. The director may by rule adopted subsequent to a public hearing designate any point for mandatory brand inspection of cattle or the furnishing of proof that cattle passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying cattle to determine if such cattle are identified, branded, or accompanied by the form prescribed by the director under RCW 16.57.240 or a brand certificate issued by the department. [1991 c 110 § 3; 1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

Effective date—1981 c 296 § 16: "Section 16 of this amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 19, 1981]." [1981 c 296 § 34.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.165 Agreements with others to perform brand inspection. The director may, in order to reduce the cost of brand inspection to livestock owners, enter into agreements with any qualified county, municipal, or other local law enforcement agency, or qualified individuals for the purpose of performing brand inspection in areas where department brand inspection may not readily be available. [1971 ex.s. c 135 § 6.]

16.57.170 Examination of livestock, hides, records. The director may enter at any reasonable time any slaughterhouse or public livestock market to make an examination of the brands on livestock or hides, and may enter at any reasonable time an establishment where hides are held to examine them for brands. The director may enter any of these premises at any reasonable time to examine all books and records required by law in matters relating to brand inspection or other methods of livestock identification. [1959 c 54 § 17.]

16.57.180 Search warrants. Should the director be denied access to any premises or establishment where such access was sought for the purposes set forth in RCW 16.57.170, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for said purposes. The court may upon such application, issue the search warrant for the purposes requested. [1959 c 54 § 18.]

16.57.200 Duty of owner or agent on brand inspection. Any owner or his agent shall make the brand or brands on livestock being brand inspected readily visible and shall cooperate with the director to carry out such brand inspection in a safe and expeditious manner. [1959 c 54 § 20.]

16.57.210 Arrest without warrant. The director shall have authority to arrest any person without warrant anywhere in the state found in the act of, or whom he has reason to believe is guilty of, driving, holding, selling or slaughtering stolen livestock. Any such person arrested by the director shall be turned over to the sheriff of the county where the arrest was made, as quickly as possible. [1959 c 54 § 21.]

16.57.220 Charges for brand inspection of cattle—Payable, when—Lien—Schedule of fees to be adopted. The director shall cause a charge to be made for all brand inspection of cattle required under this chapter and rules and regulations adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and if not shall constitute a prior lien on the cattle or cattle hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspection shall establish schedules by days and hours when a brand inspector will be on duty to perform brand inspection at established inspection points. The fees for brand inspection performed at inspection points according to schedules established by the director shall be not less than thirty cents nor more than fifty cents as prescribed by the director subsequent to a hearing. Fees for brand inspection performed by the director at points other than those designated by the director or not in accord with the schedules established by him shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.05 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended. [1981 c 296 § 17; 1971 ex.s. c 135 § 5; 1967 c 240 § 35; 1959 c 54 § 22.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.230 Charges for brand inspection—Actual inspection required. No person shall collect or make a charge for brand inspection of livestock unless there has been an actual brand inspection of such livestock by the director. [1959 c 54 § 23.]

16.57.240 Record of cattle. Any person purchasing, selling, holding for sale, trading, bartering, transferring title,

slaughtering, handling, or transporting cattle shall keep a record on forms prescribed by the director. Such forms shall show the number, specie, brand or other method of identification of such cattle and any other necessary information required by the director. The original shall be kept for a period of three years or shall be furnished to the director upon demand or as prescribed by rule, one copy shall accompany the cattle to their destination and shall be subject to inspection at any time by the director or any peace officer or member of the state patrol: PROVIDED, That in the following instances only, cattle may be moved or transported within this state without being accompanied by a certificate of permit or an official brand inspection certificate or bill of sale:

(1) When such cattle are moved or transported upon lands under the exclusive control of the person moving or transporting such cattle;

(2) When such cattle are being moved or transported for temporary grazing or feeding purposes and have the registered brand of the person having or transporting such cattle. [1991 c 110 § 4; 1985 c 415 § 8; 1981 c 296 § 18; 1959 c 54 § 24.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.260 Removal of cattle or horses from state—Inspection certificate required. It shall be unlawful for any person to remove or cause to be removed or accept for removal from this state, any cattle or horses which are not accompanied at all times by an official brand inspection certificate issued by the director on such cattle or horses, except as provided in RCW 16.57.160. [1981 c 296 § 19; 1959 c 54 § 26.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.270 Unlawful to refuse assistance in establishing identity of livestock. It shall be unlawful for any person moving or transporting livestock in this state to refuse to assist the director or any peace officer in establishing the identity of such livestock being moved or transported. [1959 c 54 § 27.]

16.57.275 Transporting cattle carcass or primal part—Certificate of permit required. Any cattle carcass, or primal part thereof, of any breed or age being transported in this state from other than a state or federal licensed and inspected slaughterhouse or common carrier hauling for such slaughterhouse, shall be accompanied by a certificate of permit signed by the owner of such carcass or primal part thereof and, if such carcass or primal part is delivered to a facility custom handling such carcasses or primal part thereof, such certificate of permit shall be deposited with the owner or manager of such custom handling facility and such certificate of permit shall be retained for a period of one year and be made available to the department for inspection during reasonable business hours. The owner of such carcass or primal part thereof shall mail a copy of the said certificate of permit to the department within ten days of said transportation. [1967 c 240 § 37.]

16.57.280 Possession of livestock marked with another's brand—Penalty. No person shall knowingly have unlawful possession of any livestock marked with a recorded brand or tattoo of another person unless:

(1) Such livestock lawfully bears the person's own healed recorded brand, or

(2) Such livestock is accompanied by a certificate of permit from the owner of the recorded brand or tattoo, or

(3) Such livestock is accompanied by a brand inspection certificate, or

(4) Such livestock is accompanied by a bill of sale from the previous owner or other satisfactory proof of ownership.

A violation of this section constitutes a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 110 § 5; 1959 c 54 § 28.]

16.57.290 Unbranded and undocumented cattle and horses—Disposition. All unbranded cattle and horses and those bearing brands not recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit, and those bearing brands recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit signed by the owner of the brand when presented for inspection, shall be sold by the director or the director's representative, unless other satisfactory proof of ownership is presented showing the person presenting them to be lawfully in possession. Upon the sale of such cattle or horses, the director or the director's representative shall give the purchasers a bill of sale therefor, or, if theft is suspected, the cattle or horses may be impounded by the director or the director's representative. [1989 c 286 § 23; 1981 c 296 § 20; 1979 c 154 § 18; 1967 ex.s. c 120 § 6; 1959 c 54 § 29.]

Severability—1989 c 286: See note following RCW 16.04.010.
Severability—1981 c 296: See note following RCW 15.04.020.
Severability—1979 c 154: See note following RCW 15.49.330.

16.57.300 Unbranded and undocumented cattle and horses—Disposition of sale proceeds. The proceeds from the sale of cattle and horses as provided for under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of such cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell such cattle or horses. If such consignor fails to establish legal ownership or the right to sell such cattle or horses, such proceeds shall be paid to the director to be disposed of as any other estray proceeds. [1989 c 286 § 24; 1981 c 296 § 21; 1959 c 54 § 30.]

Severability—1989 c 286: See note following RCW 16.04.010.
Severability—1981 c 296: See note following RCW 15.04.020.

16.57.310 Notice of sale—Claim on proceeds. When a person has been notified by registered mail that animals bearing his recorded brand have been sold by the director, he

shall present to the director a claim on the proceeds within ten days from the receipt of the notice or the director may decide that no claim exists. [1959 c 54 § 31.]

16.57.320 Disposition of proceeds of sale when no proof of ownership—Penalty for accepting proceeds after sale, trade, etc. If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he or she has sold, bartered or traded such animals to the claimant or any other person. A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 110 § 6; 1959 c 54 § 32.]

16.57.330 Disposition of proceeds of sale when no claim made. If, after the expiration of one year from the date of sale, no claim is made, the money shall be credited to the department of agriculture to be expended in carrying out the provisions of this chapter. [1959 c 54 § 33.]

16.57.340 Reciprocal agreements—When livestock from another state an estray, sale. The director shall have the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation or loss of identification of livestock. The director may declare any livestock which is shipped or moved into this state from such states estrays if such livestock is not accompanied by the proper official brand certificate or other such certificates required by the law of the state of origin of such livestock. The director may hold such livestock subject to all costs of holding or sell such livestock and send the funds, after the deduction of the cost of such sale, to the proper authority in the state of origin of such livestock. [1959 c 54 § 34.]

16.57.350 Rules—Enforcement of chapter. The director, but not his duly appointed representatives, may adopt such rules and/or regulations as are necessary to carry out the purposes of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and/or rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out duties imposed on him by this chapter and/or rules and regulations adopted hereunder. [1959 c 54 § 35.]

16.57.360 Civil infractions. The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a class I civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein. [1991 c 110 § 7; 1959 c 54 § 36.]

16.57.370 Disposition of fees. All fees collected under the provisions of this chapter shall be retained and deposited by the director to be used only for the enforcement of this chapter. [1959 c 54 § 37.]

Fees provided in chapter 16.58 RCW to be used to carry out provisions of chapters 16.57 and 16.58 RCW: RCW 16.58.130.

16.57.380 Horses—Mandatory brand inspection points—Powers of director. The director may by rule adopted subsequent to a public hearing designate any point for mandatory brand inspection of horses or the furnishing of proof that horses passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying horses to determine if such horses are identified or branded. [1991 c 110 § 8; 1981 c 296 § 22; 1974 ex.s. c 38 § 1.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.390 Horses—Brand inspection fees and charges. The director shall cause a charge to be made for all brand inspections of horses required under this chapter and rules and regulations adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and if not shall constitute a prior lien on the horses or horse hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspections of horses shall establish schedules by days and hours when a brand inspector will be on duty or perform brand inspections of horses at established inspection points. The fees for brand inspections of horses performed at inspection points according to schedules established by the director shall be not more than two dollars as prescribed by the director subsequent to a hearing. Fees for brand inspections of horses performed by the director at points other than those designated by the director or not in accord with the schedules established by him shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.05 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended. [1974 ex.s. c 38 § 2.]

16.57.400 Horses—Identification certificates—Exemption from brand inspection—Fees. The director may provide by rules and regulations adopted pursuant to chapter 34.05 RCW for the issuance of individual horse identification certificates or other means of horse identification deemed appropriate. Such certificates or other means of identification shall be valid only for the use of the horse owner in whose name it is issued.

Horses identified pursuant to the provisions of this section and the rules and regulations adopted hereunder shall not be subject to brand inspection except when sold at points

provided for in RCW 16.57.380. The director shall charge a fee for the certificates or other means of identification authorized pursuant to this section and no identification shall be issued until the director has received the fee. The schedule of fees shall be established in accordance with the provisions of chapter 34.05 RCW. [1981 c 296 § 23; 1974 ex.s. c 38 § 3.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.410 Horses—Registering agencies—Records—Identification symbol inspections—Rules. (1) No person may act as a registering agency without a permit issued by the department. The director may issue a permit to any person or organization to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for such permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of one hundred dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Individual identification symbols shall be inspected as required for brands under RCW 16.57.380 and 16.57.390. Any horse presented for inspection and bearing such a symbol, but not accompanied by proof of registration and certificate of permit, shall be sold as provided under RCW 16.57.290 through 16.57.330.

(4) The director shall adopt such rules as are necessary for the effective administration of this section pursuant to chapter 34.05 RCW. [1989 c 286 § 25; 1981 c 296 § 35.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.900 Severability—1959 c 54. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 54 § 38.]

16.57.901 Severability—1967 c 240. See note following RCW 43.23.010.

Chapter 16.58
IDENTIFICATION OF CATTLE THROUGH LICENSING OF CERTIFIED FEED LOTS

Sections

16.58.010 Purpose. The purpose of this chapter is to expedite the movement of cattle from producers to the point of slaughter without losing the ownership identity of such cattle, and further to provide for fair and economical methods of identification of cattle in such commercial feed lots. [1979 c 81 § 1; 1971 ex.s. c 181 § 1.]

16.58.020 Definitions. For the purpose of this chapter:

(1) "Certified feed lot" means any place, establishment, or facility commonly known as a commercial feed lot, cattle feed lot, or the like, which complies with all of the requirements of this chapter, and any regulations adopted pursuant to the provisions of this chapter and which holds a valid license from the director as hereinafter provided.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his duly authorized representative.

(4) "Licensee" means any persons licensed under the provisions of this chapter.

(5) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be. [1971 ex.s. c 181 § 2.]

16.58.030 Rules and regulations—Interference with director proscribed. The director may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. The adoption of such rules shall be subject to the provisions of this chapter and rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out any duties imposed upon him by this chapter or rules and regulations adopted hereunder. [1971 ex.s. c 181 § 3.]

16.58.040 Certified feed lot license—Required—Application, contents. On or after August 9, 1971, any person desiring to engage in the business of operating one or more certified feed lots shall obtain an annual license from the director for such purpose. The application for a license shall be on a form prescribed by the director and shall include the following:

(1) The number of certified feed lots the applicant intends to operate and their exact location and mailing address;

(2) The legal description of the land on which the certified feed lot will be situated;

(3) A complete description of the facilities used for feeding and handling of cattle at each certified feed lot;

(4) The estimated number of cattle which can be handled for feeding purposes at each such certified feed lot; and

(5) Any other information necessary to carry out the purpose and provisions of this chapter and rules or regulations adopted hereunder. [1971 ex.s. c 181 § 4.]

16.58.050 Certified feed lot license—Fee—Issuance or renewal. The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of five hundred dollars. Upon approval of the application by the director and compliance with the provisions of this chapter and rules and regulations adopted hereunder, the applicant shall be issued a license or a renewal thereof. [1979 c 81 § 2; 1971 ex.s. c 181 § 5.]

16.58.060 Certified feed lot license—Expiration—Late renewal. The director shall establish by rule an expiration date or dates for all certified feed lot licenses. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. If an application for renewal of a certified feed lot license is not received by the department per the date required by rule or should a person fail, refuse, or neglect to apply for renewal of a preexisting license on or before the date of expiration, that person shall be assessed an additional twenty-five dollars which shall be added to the regular license fee and shall be paid before the director may issue a license to the applicant. [1991 c 109 § 10; 1971 ex.s. c 181 § 6.]

16.58.070 Certified feed lot license—Denial, suspension, or revocation of—Procedure. The director is authorized to deny, suspend, or revoke a license in accord with the provisions of chapter 34.05 RCW if he finds that there has been a failure to comply with any requirement of this chapter or rules and regulations adopted hereunder. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 175 § 54; 1971 ex.s. c 181 § 7.]

Effective date—1989 c 175: See note following RCW 34.05.010.

16.58.080 Brand inspection, facilities and help to be furnished for. Every certified feed lot shall be equipped with a facility or a livestock pen, approved by the director as to location and construction within the said feed lot so that necessary brand inspection can be carried on in a proper, expeditious and safe manner. Each licensee shall furnish the director with sufficient help necessary to carry out brand inspection in the manner set forth above. [1971 ex.s. c 181 § 8.]

16.58.095 Brand inspection required for cattle not having brand inspection certificate. All cattle entering or reentering a certified feed lot must be inspected for brands upon entry, unless they are accompanied by a brand inspection certificate issued by the director, or any other agency authorized in any state or Canadian province by law to issue such a certificate. Licensees shall report a discrepancy between cattle entering or reentering a certified feed lot and the brand inspection certificate accompanying the cattle to the nearest brand inspector immediately. A discrepancy may require an inspection of all the cattle entering or reentering the lot, except as may otherwise be provided by rule. [1991 c 109 § 11; 1979 c 81 § 6.]

16.58.100 Audits—Purpose. The director shall each year conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. Such audits shall be for the purpose of determining if such cattle correlate with the brand inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his assurance that brand inspected cattle were not commingled with uninspected cattle. [1979 c 81 § 3; 1971 ex.s. c 181 § 10.]

16.58.110 Records—Examination. All certified feed lots shall furnish the director with records as requested by him from time to time on all cattle entering or on feed in said certified feed lots and dispersed therefrom. All such records shall be subject to examination by the director for the purpose of maintaining the integrity of the identity of all such cattle. The director may make the examinations only during regular business hours except in an emergency to protect the interest of the owners of such cattle. [1991 c 109 § 12; 1971 ex.s. c 181 § 11.]

16.58.120 Records required at each certified feed lot. The licensee shall maintain sufficient records as required by the director at each certified feed lot, if said licensee operates more than one certified feed lot. [1991 c 109 § 13; 1971 ex.s. c 181 § 12.]

16.58.130 Fee for each head of cattle handled—Failure to pay. Each licensee shall pay to the director a fee of ten cents for each head of cattle handled through the licensee's feed lot. Payment of such fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments. [1991 c 109 § 14; 1979 c 81 § 4; 1971 ex.s. c 181 § 13.]

16.58.140 Disposition of fees. All fees provided for in this chapter shall be retained by the director for the purpose of enforcing and carrying out the purpose and provisions of this chapter or chapter 16.57 RCW. [1979 c 81 § 5; 1971 ex.s. c 181 § 14.]

16.58.150 Situations when no brand inspection required. No brand inspection shall be required when cattle are moved or transferred from one certified feed lot to another or the transfer of cattle from a certified feed lot to

a point within this state, or out of state where this state maintains brand inspection, for the purpose of immediate slaughter. [1971 ex.s. c 181 § 15.]

16.58.160 Suspension of license awaiting investigation. The director may, when a certified feed lot's conditions become such that the integrity of reports or records of the cattle therein becomes doubtful, suspend such certified feed lot's license until such time as the director can conduct an investigation to carry out the purpose of this chapter. [1991 c 109 § 15; 1971 ex.s. c 181 § 16.]

16.58.170 General penalties—Subsequent offenses. Any person who violates the provisions of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and shall be guilty of a gross misdemeanor for any second or subsequent violation: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1971 ex.s. c 181 § 17.]

16.58.900 Chapter as cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 181 § 18.]

16.58.910 Severability—1971 ex.s. c 181. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances shall not be affected. [1971 ex.s. c 181 § 19.]

Chapter 16.60
FENCES

Sections

16.60.010 Lawful fence defined. A lawful fence shall be of at least four barbed, horizontal, well-stretched wires, spaced so that the top wire is forty-eight inches, plus or minus four inches, above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. These wires shall be securely fastened to substantial posts set firmly in the ground as nearly equidistant as possible, but not more than twenty-four feet apart. If the posts are set more than sixteen feet apart, the wires shall be supported by stays placed no more than eight feet from each other or from the posts. [1985 c 415 § 22; Code 1881 § 2488; 1873 p 447 § 1; 1871 p 63 § 1; 1869 p 323 § 1; RRS § 5441. FORMER PART OF SECTION: Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442, now codified as RCW 16.60.011.]

16.60.011 Other lawful fences. All other fences as strong and as well calculated as the fence described in RCW 16.60.010 shall be lawful fences. [1985 c 415 § 23; Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442. Formerly RCW 16.60.010, part.]

16.60.015 Liability for damages—Restraint—Notice. Any person making and maintaining in good repair around his or her enclosure or enclosures, any fence such as is described in RCW 16.60.010 and 16.60.011, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals, so trespassing, may be taken and held as security for the payment of such damages and costs: PROVIDED, That such person shall provide notice as required under RCW 16.04.020 and 16.04.025: PROVIDED FURTHER, That such person shall have such fences examined and the damages assessed by three reliable, disinterested parties and practical farmers, within five days next after the trespass has been committed: AND, PROVIDED FURTHER, That if, before trial, the owner of such trespassing animal or animals, shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded. [1985 c 415 § 26; Code 1881 § 2490; 1873 p 447 § 3; 1871 p 64 § 3; 1869 p 324 § 3; RRS § 5443.]

Trespassing animals—Restraint—Damages and costs: RCW 16.04.010.

16.60.020 Partition fence—Reimbursement. When any fence has been, or shall hereafter be, erected by any person on the boundary line of his land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: PROVIDED, That in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his land fenced with hog fencing and uses the partition fence to make a hog enclosure of his land, then he shall pay to the one who owns said hog fence one-half of the value thereof. [1907 c 13 § 1; Code 1881 § 2491; 1873 p 448 § 4; 1871 p 65 § 4; 1869 p 324 § 4; RRS § 5444.]

Hog fencing: RCW 16.60.050.

16.60.030 Partition fence—Erection—Notice. When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land. [Code 1881 § 2492; 1873 p 448 § 5; 1871 p 65 § 5; 1869 p 325 § 5; RRS § 5445.]

16.60.040 Partition fence—Failure to build—Recovery of half of cost. If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party. [Code 1881 § 2493; 1873 p 448 § 6; 1871 p 65 § 6; 1869 p 325 § 6; RRS § 5446.]

16.60.050 Partition fence—Hog fencing. The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the party who put it up, and he may remove it at any time he desires: PROVIDED, That he leaves the fence in as good condition as it was when the hog fencing was by him attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his part of such fence, as to all materials used in said fence additional to said hog fencing. [1907 c 13 § 2; Code 1881 § 2494; 1873 p 449 § 7; 1871 p 65 § 7; 1869 p 325 § 7; RRS § 5447.]

Reimbursement—Hog fencing: RCW 16.60.020.

16.60.055 Fence on the land of another by mistake—Removal. When any person shall unwittingly or by mistake, erect any fence on the land of another, and when by a line legally determined that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: PROVIDED, That when the fence to be removed forms any part of a fence enclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run. [Code 1881 § 2495; 1873 p 449 § 8; 1871 p 65 § 8; 1869 p 325 § 8; RRS § 5448. Formerly RCW 16.60.070.]

16.60.060 Partition fence—Discontinuance. When any party shall wish to lay open his inclosure, he shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in RCW 16.60.055. [Code 1881 § 2496; 1873 p 449 § 9; 1871 p 65 § 9; 1869 p 325 § 9; RRS § 5449.]

16.60.062 Assessing value of partition fence. In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in RCW 16.60.020. [Code 1881 § 2497; 1873 p 449 § 10; 1871 p 66 § 10; 1869 p 326 § 10; RRS § 5450.]

16.60.064 Impeachment of assessment—Damages. Upon the trial of any cause occurring under the provisions of RCW 16.60.010 through 16.60.076, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages. [Code 1881 § 2498; 1873 p 449 § 11; 1871 p 66 § 11; 1869 p 326 § 11; RRS § 5451.]

16.60.075 Damages by breachy animals. The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal. [Code 1881 § 2499; 1873 p 449 § 12; 1871 p 66 § 12; 1869 p 326 § 12; RRS § 5452. Formerly RCW 16.04.090, part. FORMER PART OF SECTION: Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453, now codified as RCW 16.60.076.]

16.60.076 Proof. In case of actions for damages under RCW 16.60.010 through 16.60.076, it shall be sufficient to prove that the fence was lawful when the break was made. [Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453. Formerly RCW 16.04.090, part.]

16.60.080 Temporary gate across highway. Whenever any inhabitant of this state shall have his fences removed by floods or destroyed by fire, the county commissioners of the county in which he resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in order to secure him from depredations upon his crops until he can repair his fences, and they shall grant such license or permit for no longer period than they may think absolutely necessary. [Code 1881, Bagley's Supp., p 25 § 1; 1871 p 103 § 1; RRS § 5459. FORMER PART OF SECTION: Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460, now codified as RCW 16.60.085.]

16.60.085 Temporary gate across highway—Auditor may grant permit. It shall be lawful for the auditor of any county to grant such permit in vacation, but his license shall not extend past the next meeting of the commissioner's

court. [Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460. Formerly RCW 16.60.080, part.]

16.60.090 Failure to remove gate—Penalty. Any person retaining a gate across the highway after his license shall expire, shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he shall retain the same, and it may be removed by the road supervisor, as an obstruction, at the cost of the person placing or keeping it upon the highway. [Code 1881, Bagley's Supp., p 25 § 3; 1871 p 104 § 3; RRS § 5461.]

16.60.095 Fees. The fees of the auditor under RCW 16.60.080 through 16.60.095 shall be paid by the applicant. [Code 1881, Bagley's Supp., p 25 § 4; 1871 p 104 § 4.]

Chapter 16.65
PUBLIC LIVESTOCK MARKETS

Sections

Exemptions from commission merchants' act: RCW 20.01.030.

16.65.010 Definitions. For the purposes of this chapter:

(1) The term "public livestock market" means any place, establishment or facility commonly known as a "public livestock market", "livestock auction market", "livestock sales ring", yards selling on commission, or the like, conducted or operated for compensation or profit as a public livestock market, consisting of pens or other enclosures, and their appurtenances in which livestock is received, held, sold, kept for sale or shipment. The term does not include the operation of a person licensed under this chapter to operate a special open consignment horse sale.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his duly authorized representative.

(4) "Licensee" means any person licensed under the provisions of this chapter.

(5) "Livestock" includes horses, mules, burros, cattle, sheep, swine, and goats.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(7) "Stockyard" means any place, establishment, or facility commonly known as a stockyard consisting of pens or other enclosures and their appurtenances in which livestock services such as feeding, watering, weighing, sorting, receiving and shipping are offered to the public:

PROVIDED, That stockyard shall not include any facilities where livestock is offered for sale at public auction, feed lots, or quarantined registered feed lots.

(8) "Packer" means any person engaged in the business of slaughtering, manufacturing, preparing meat or meat products for sale, marketing meat, meat food products or livestock products.

(9) "Deputy state veterinarian" means a graduate veterinarian authorized to practice in the state of Washington and appointed or deputized by the director as his duly authorized representative.

(10) "Special open consignment horse sale" means a sale conducted by a person other than the operator of a public livestock market which is limited to the consignment of horses and donkeys only for sale on an occasional and seasonal basis. [1983 c 298 § 1; 1961 c 182 § 1; 1959 c 107 § 1.]

16.65.015 Exemptions from chapter. This chapter does not apply to:

(1) A farmer selling his own livestock on the farmer's own premises by auction or any other method.

(2) A farmers' cooperative association or an association of livestock breeders when any class of their own livestock is assembled and offered for sale at a special sale on an occasional and seasonal basis under the association's management and responsibility, and the special sale has been approved by the director in writing. However, the special sale shall be subject to brand and health inspection requirements as provided in this chapter for sales at public livestock markets. [1983 c 298 § 2.]

16.65.020 Supervision of markets and special open consignment horse sales—Rules and regulations—Interference with director's duties. Public livestock markets and special open consignment horse sales shall be under the direction and supervision of the director, and the director, but not his duly authorized representative, may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out any duties imposed upon him by this chapter or rules and regulations adopted hereunder. [1983 c 298 § 5; 1959 c 107 § 2.]

16.65.030 Public livestock market license required—Application—Generally. (1) On and after June 10, 1959, no person shall operate a public livestock market without first having obtained a license from the director. Application for such license or renewal thereof shall be in writing on forms prescribed by the director, and shall include the following:

(a) A legal description of the property upon which the public livestock market shall be located.

(b) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens and all facilities the applicant proposes to use in the operation of such public livestock market.

(c) A detailed statement showing all the assets and liabilities of the applicant which must reflect a sufficient net worth to construct or operate a public livestock market.

(d) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(e) The weekly or monthly sales day or days on which the applicant proposes to operate his public livestock market sales.

(f) Projected source and quantity of livestock, by county, anticipated to be handled.

(g) Projected income and expense statements for the first year's operation.

(h) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(i) Such other information as the director may reasonably require.

(2) The director shall, after public hearing as provided by chapter 34.05 RCW, grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all of the requirements of this section and giving reasonable consideration at the same hearing to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and

(b) The present market services elsewhere available to the trade area proposed to be served.

(3) Such application shall be accompanied by a license fee based on the average gross sales volume per official sales day of that market:

(a) Markets with an average gross sales volume up to and including ten thousand dollars, a one hundred dollar fee;

(b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a two hundred dollar fee; and

(c) Markets with an average gross sales volume over fifty thousand dollars, a three hundred dollar fee.

(4) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by the appropriate license fee.

(5) Upon the approval of the application by the director and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof. Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued. [1991 c 17 § 1; 1979 ex.s. c 91 § 1; 1971 ex.s. c 192 § 1; 1967 ex.s. c 120 § 5; 1961 c 182 § 2; 1959 c 107 § 3.]

16.65.040 Public livestock market license—Expiration—Penalty. All public livestock market licenses provided for in this chapter shall expire on March 1st subsequent to the date of issue. Any person who fails, refuses, or neglects to apply for a renewal of a preexisting license on or before the date of expiration, shall pay a penalty of twenty-five dollars, which shall be added to the regular license fee, before such license may be renewed by

the director. [1983 c 298 § 6; 1979 ex.s. c 91 § 2; 1959 c 107 § 4.]

16.65.042 Special open consignment horse sale license required—Application—Fee—Where and when valid. (1) A person shall not operate a special open consignment horse sale without first obtaining a license from the director. The application for the license shall include:

(a) A detailed statement showing all of the assets and liabilities of the applicant;

(b) The schedule of rates and charges the applicant proposes to impose on the owners of horses for services rendered in the operation of the horse sale;

(c) The specific date and exact location of the proposed sale;

(d) Projected quantity and approximate value of horses to be handled; and

(e) Such other information as the director may reasonably require.

(2) The application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the director and compliance with this chapter, the applicant shall be issued a license. A special open consignment horse sale license is valid only for the specific date or dates and exact location for which the license was issued. [1983 c 298 § 3.]

16.65.044 Public livestock market—Open consignment horse sale—Consignor's name. It is lawful for the operator of a public livestock market or an open consignment horse sale, upon receiving a request to do so, to allow the announcement of the correct and accurate name of the consignor of any cattle or horses being presented for sale to potential buyers. [1991 c 17 § 5.]

16.65.050 Disposition of fees. All fees provided for under this chapter shall be retained by the director for the purpose of enforcing this chapter. [1959 c 107 § 5.]

16.65.060 License to be posted. The licensee's license shall be posted conspicuously in the main office of such licensee's public livestock market or special open consignment horse sale. [1983 c 298 § 7; 1959 c 107 § 6.]

16.65.080 Denial, suspension, revocation of license—Procedure. (1) The director is authorized to deny, suspend, or revoke a license in the manner prescribed herein, when there are findings by the director that any licensee (a) has been guilty of fraud or misrepresentation as to titles, charges, numbers, brands, weights, proceeds of sale, or ownership of livestock; (b) has attempted payment to a consignor by a check the licensee knows not to be backed by sufficient funds to cover such check; (c) has violated any of the provisions of this chapter or rules and regulations adopted hereunder; (d) has violated any laws of the state that require health or brand inspection of livestock; (e) has violated any condition of the bond, as provided in this chapter. However, the director may deny a license if the applicant refuses to accept the sales day or days allocated to him under the provisions of this chapter.

(2) In all proceedings for revocation, suspension, or denial of a license the licensee or applicant shall be given an opportunity to be heard in regard to such revocation, suspension or denial of a license. The director shall give the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for such revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearings shall be held in the city where the licensee has his principal place of business, or where the applicant resides, unless some other place be agreed upon by the parties, and the defendant may be represented by counsel.

(3) The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents anywhere in the state. The applicant or licensee shall have opportunity to be heard, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded, and may be taken by deposition under such rules as the director may prescribe.

(4) The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions. [1985 c 415 § 9; 1971 ex.s. c 192 § 2; 1961 c 182 § 3; 1959 c 107 § 8.]

Orders—Appeal: RCW 16.65.450.

16.65.090 Brand inspection—Consignor's fee—Minimum fee chargeable to licensee. The director shall provide for brand inspection. When such brand inspection is required the licensee shall collect from the consignor and pay to the department, as provided by law, a fee for brand inspection for each animal consigned to the public livestock market or special open consignment horse sale: PROVIDED, That if in any one sale day the total fees collected for brand inspection do not exceed sixty dollars, then such licensee shall pay sixty dollars for such brand inspection or as much thereof as the director may prescribe. [1983 c 298 § 8; 1971 ex.s. c 192 § 3; 1959 c 107 § 9.]

16.65.100 Brand inspection—Purchaser's fee. The licensee of each public livestock market or special open consignment horse sale shall collect from any purchaser of livestock requesting brand inspection a fee as provided by law for each animal inspected. Such fee shall be in addition to the fee charged to the consignor for brand inspection and shall not apply to the minimum fee chargeable to the licensee. [1983 c 298 § 9; 1959 c 107 § 10.]

16.65.110 Charge for examining, testing, inoculating, etc.—Minimum fee. The director shall cause a charge to be made for any examining, testing, treating, or inoculation required by this chapter and rules and regulations adopted hereunder. Such charge shall be paid by the licensee to the department and such charge shall include the cost of the required drugs and a fee no larger than two dollars nor less than fifty cents for administration of such drugs to each animal and such fee shall be set at the discre-

tion of the director. However, if the total fees payable to the department for such examining, testing, treating or inoculation do not exceed the actual cost to the department for such examining, testing, treating, or inoculation, or ten dollars (whichever is greater), the director shall require the licensee to pay the actual cost of such examining, testing, treating, or inoculation, or ten dollars (whichever is greater), to the department. [1959 c 107 § 11.]

16.65.120 Disposition of proceeds of sale—Limitations on licensee. A licensee shall not, except as provided in this chapter, pay the net proceeds or any part thereof arising from the sale of livestock consigned to the said licensee for sale, to any person other than the consignor of such livestock except upon an order from a court of competent jurisdiction, unless (1) such licensee has reason to believe that such person is the owner of the livestock; (2) such person holds a valid unsatisfied mortgage or lien upon the particular livestock, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock. [1959 c 107 § 12.]

16.65.130 Unlawful use of consignor's net proceeds. It shall be unlawful for the licensee to use for his own purposes consignor's net proceeds, or funds received by such licensee to purchase livestock on order, through recourse to the so-called "float" in the bank account, or in any other manner. [1959 c 107 § 13.]

16.65.140 "Custodial account for consignor's proceeds"—Composition, use—Accounts and records. Each licensee shall establish a custodial account for consignor's proceeds. All funds derived from the sale of livestock handled on a commission or agency basis shall be deposited in that account. Such account shall be drawn on only for the payment of net proceeds to the consignor, or such other person or persons of whom such licensee has knowledge is entitled to such proceeds, and to obtain from such proceeds only the sums due the licensee as compensation for his services as are set out in his tariffs, and for such sums as are necessary to pay all legal charges against the consignment of livestock which the licensee in his capacity as agent is required to pay for on behalf of the consignor or shipper. The licensee in each case shall keep such accounts and records that will at all times disclose the names of the consignors and the amount due and payable to each from the funds in the custodial account for consignor's proceeds. The licensee shall maintain the custodial account for consignor's proceeds in a manner that will expedite examination by the director and reflect compliance with the requirements of this section. [1971 ex.s. c 192 § 4; 1959 c 107 § 14.]

16.65.150 Penalty for failure to disclose unsatisfied lien, mortgage. The delivery of livestock, for the purpose of sale, by any consignor or vendor to a public livestock market or special open consignment horse sale without making a full disclosure to the agent or licensee of such public livestock market or special open consignment horse sale of any unsatisfied lien or mortgage upon such livestock shall constitute a gross misdemeanor. [1983 c 298 § 10; 1959 c 107 § 15.]

16.65.160 Delivery of proceeds and invoice to consignor or shipper. The licensee shall deliver the net proceeds together with an invoice to the consignor or shipper within twenty-four hours after the sale or by the end of the next business day if the licensee is not on notice that any other person or persons have a valid interest in the livestock. [1959 c 107 § 16.]

16.65.170 Records of licensee—Contents. The licensee shall keep accurate records which shall be available for inspection to all parties directly interested therein, and such records shall contain the following information:

(1) The date on which each consignment of livestock was received and sold.

(2) The name and address of the buyer and seller of such livestock.

(3) The number and species of livestock received and sold.

(4) The marks and brands on such livestock as supplied by a brand inspector.

(5) All statements of warranty or representations of title material to, or upon which, any such sale is consummated.

(6) The gross selling price of such livestock with a detailed list of all charges deducted therefrom.

Such records shall be kept by the licensee for one year subsequent to the receipt of such livestock. [1967 c 192 § 1; 1959 c 107 § 17.]

16.65.180 Unjust, unreasonable, discriminatory rates or charges prohibited. All rates or charges made for any stockyard services furnished at a public livestock market or special open consignment horse sale shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. [1983 c 298 § 11; 1959 c 107 § 18.]

16.65.190 Schedule of rates and charges. No person shall hereafter operate a public livestock market or special open consignment horse sale unless such person has filed a schedule with the application for license to operate such public livestock market or special open consignment horse sale. Such schedule shall show all rates and charges for stockyard services to be furnished by such person at such public livestock market or special open consignment horse sale.

(1) Schedules shall be posted conspicuously at the public livestock market or special open consignment horse sale, and shall plainly state all such rates and charges in such detail as the director may require, and shall state any rules and regulations which in any manner change, affect, or determine any part of the aggregate of such rates or charges, or the value of the stockyard services furnished. The director may determine and prescribe the form and manner in which such schedule shall be prepared, arranged and posted.

(2) No changes shall be made in rates or charges so filed and published except after thirty days' notice to the director and to the public filed and posted as aforesaid,

which shall plainly state the changes proposed to be made and the time such changes will go into effect.

(3) No licensee shall charge, demand or collect a greater or a lesser or a different compensation for such service than the rates and charges specified in the schedule filed with the director and in effect at the time; nor shall a licensee refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from properly returning to its members, on a patronage basis, its excess earnings on their livestock); nor shall a licensee extend to any person at such public livestock market or special open consignment horse sale any stockyard services except such as are specified in such schedule. [1983 c 298 § 12; 1959 c 107 § 19.]

16.65.200 Licensee's bond to operate market or special open consignment horse sale. Before the license is issued to operate a public livestock market or special open consignment horse sale, the applicant shall execute and deliver to the director a surety bond in a sum as herein provided for, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be a standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules and/or regulations adopted hereunder. Said bond shall be to the state in favor of every consignor and/or vendor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale: PROVIDED, That if such applicant is bonded as a market agency under the provisions of the packers and stockyards act, (7 U.S.C. 181) as amended, on March 20, 1961, in a sum equal to or greater than the sum required under the provisions of this chapter, and such applicant furnishes the director with a bond approved by the United States secretary of agriculture naming the department as trustee, the director may accept such bond and its method of termination in lieu of the bond provided for herein and issue a license if such applicant meets all the other requirements of this chapter.

The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110 concerning notice and proof of service, as enacted or hereafter amended, but this shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110 concerning notice and proof of service as enacted or hereafter amended, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. [1983 c 298 § 13; 1971 ex.s. c 192 § 5; 1961 c 182 § 4. Prior: 1959 c 107 § 20.]

16.65.210 Licensee's bond to operate market—Amount determined by prior business operations—Minimum amount. The sum of the bond to be executed by an applicant for a public livestock market license shall be determined in the following manner:

(1) Determine the dollar volume of business carried on, at, or through, such applicant's public livestock market in the twelve-month period prior to such applicant's application for a license.

(2) Divide such dollar volume of business by the number of official sale days granted such applicant's public livestock market, as herein provided, in the same twelve-month period provided for in subsection (1).

(3) Bond amount shall be that amount obtained by the formula in subsection (2) except that it shall not be an amount less than ten thousand dollars and if that amount shall exceed fifty thousand then that portion above fifty thousand shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest five thousand figure above that arrived at in the formula. [1971 ex.s. c 192 § 6; 1959 c 107 § 21.]

16.65.220 Licensee's bond to operate market—Amount when no prior business operations—Minimum and maximum amount. If the application for a license to operate a public livestock market is from a new public livestock market which has not operated in the past twelve-month period, the director shall determine a bond, in a reasonable sum, that the applicant shall execute in favor of the state, which shall not be less than ten thousand dollars nor greater than twenty-five thousand dollars: PROVIDED, That the director may at any time, upon written notice, review the licensee's operations and determine whether, because of increased or decreased sales, the amount of the bond should be altered. [1971 ex.s. c 192 § 7; 1959 c 107 § 22.]

16.65.230 Licensee's bond to operate market—One bond for each market. Any licensee operating more than one public livestock market shall execute a bond, as herein provided, for each such licensed public livestock market. [1959 c 107 § 23.]

16.65.232 Licensee's bond to operate special open consignment horse sale—Amount determined by estimate of business—Minimum amount. The sum of the bond to be executed by an applicant for a special open consignment horse sale license shall be determined by estimating the dollar volume of business to be carried on, at, or through the applicant's proposed special open consignment horse sale. The bond amount shall be that amount estimated as the applicant's dollar volume of business. However, the bond shall not be in an amount less than ten thousand dollars. If the amount exceeds fifty thousand dollars, then that portion above fifty thousand dollars shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest greater five thousand dollar figure. [1983 c 298 § 4.]

16.65.235 Cash or other security in lieu of surety bond. In lieu of the surety bond required under the provi-

sions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules and regulations necessary for the administration of such security. [1973 c 142 § 3.]

16.65.240 Action on bond—Fraud of licensee. Any vendor or consignor creditor claiming to be injured by the fraud of any licensee may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud. [1959 c 107 § 24.]

16.65.250 Action on bond—Failure to comply with chapter. The director or any vendor or consignor creditor may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter and the rules and/or regulations adopted hereunder. [1959 c 107 § 25.]

16.65.260 Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties. In case of failure by a licensee to pay amounts due a vendor or consignor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale, as evidenced by a verified complaint filed with the director, the director may proceed forthwith to ascertain the names and addresses of all vendor or consignor creditors of such licensee, together with the amounts due and owing to them and each of them by such licensee, and shall request all such vendor and consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known vendor or consignor creditor at his last known address. [1983 c 298 § 14; 1959 c 107 § 26.]

16.65.270 Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim. If a vendor or consignor creditor so addressed fails, refuses or neglects to file in the office of the director his verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said producer or consignor creditor. [1959 c 107 § 27.]

16.65.280 Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available. Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all said vendor and consignor creditors, the director, after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [1959 c 107 § 28.]

16.65.290 Licensee's failure to pay vendor, consignor—Settlement, compromise of claims—Demand on bond—Discharge. Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [1959 c 107 § 29.]

16.65.300 Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file. Upon the refusal of the surety company to pay the demand, the director may thereupon bring an action on the bond in behalf of said vendor and consignor creditors. Upon any action being commenced on said bond, the director may require the filing of a new bond. Immediately upon the recovery in any action on such bond such licensee shall file a new bond. Upon failure to file the same within ten days, in either case, such failure shall constitute grounds for the suspension or revocation of his license. [1959 c 107 § 30.]

16.65.310 Licensee's failure to pay vendor, consignor—Settlement, compromise—Creditors share—Priority of state's claim. In any settlement or compromise by the director with a surety company as provided in RCW 16.65.290, where there are two or more consignor and/or vendor creditors that have filed claims, either fixed or contingent, against a licensee's bond, such creditors shall share pro rata in the proceeds of the bond to the extent of their actual damage: PROVIDED, That the claims of the state and the department which may accrue from the conduct of the licensee's public livestock market shall have priority over all other claims. [1959 c 107 § 31.]

16.65.320 Investigations by director—Complaints. For the purpose of enforcing the provisions of this chapter, the director on the director's own motion or upon the verified complaint of any vendor or consignor against any licensee, or agent, or any person assuming or attempting to act as such, shall have full authority to make any and all necessary investigations. The director is empowered to administer oaths of verification of such complaints. [1985 c 415 § 10; 1959 c 107 § 32.]

16.65.330 Investigations—Powers of director. For the purpose of making investigations as provided for in RCW 16.65.320, the director may enter a public livestock market and examine any records required under the provisions of this chapter. The director shall have full authority to issue subpoenas requiring the attendance of witnesses before him, together with all books, memorandums, papers, and other documents relative to the matters under investigation, and to administer oaths and take testimony thereunder. [1959 c 107 § 33.]

16.65.340 Testing, examination, etc., of livestock for disease. The director shall, when livestock is sold, traded,

exchanged or handled at or through a public livestock market, require such testing, treating, identifying, examining and record keeping of such livestock by a deputy state veterinarian as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, paratuberculosis, hog cholera or any other infectious, contagious or communicable disease among the livestock of this state. [1967 c 192 § 2; 1959 c 107 § 34.]

16.65.350 Examinations, inspections, sanitary and health practices—Suspension, revocation of license. (1) The director shall perform all tests and make all examinations required under the provisions of this chapter and rules and regulations adopted hereunder: PROVIDED, That veterinary inspectors of the United States department of agriculture may be appointed by the director to make such examinations and tests as are provided for in this chapter without bond or compensation, and shall have the same authority and power in this state as a deputy state veterinarian.

(2) The director shall have the responsibility for the direction and control of sanitary practices and health practices and standards and for the examination of animals at public livestock markets. The deputy state veterinarian at any such public livestock market shall notify the licensee or his managing agent, in writing, of insanitary practices or conditions. Such deputy state veterinarian shall notify the director if the improper sanitary practices or conditions are not corrected within the time specified. The director shall investigate and upon finding such report correct shall take appropriate action to hold a hearing on the suspension or revocation of the licensee's license. [1959 c 107 § 35.]

16.65.360 Facilities—Sanitation—Requirements. Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved sewage system: PROVIDED, That the director may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.

(2) Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.

(3) All yards, chutes and pens used in handling livestock shall be constructed of such materials which will render them easily cleaned and disinfected, and such yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director.

(4) Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(5) All swine pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(6) A water system carrying a pressure of forty pounds and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.

(7) Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or to quarantine livestock with other contagious or communicable diseases and shall be:

(a) hard surfaced with concrete or similar impervious material and shall be kept in good repair;

(b) provided with separate watering facilities;

(c) painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate;

(d) provided with a tight board fence not less than five and one-half feet high;

(e) cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director. [1959 c 107 § 36.]

16.65.370 Watering, feeding facilities—Unlawful acts. Pens used to hold livestock for a period of twenty-four hours or more in a public livestock market shall have watering and feeding facilities for livestock held in such pens. It shall be unlawful for a public livestock market to hold livestock for a period longer than twenty-four hours without feeding and watering such livestock. An operator of a public livestock market may also refuse to accept the consignment of any livestock that the licensee may believe to have been inadequately fed or otherwise inadequately cared for prior to the delivery of the livestock in question to the public livestock market. [1991 c 17 § 2; 1959 c 107 § 37.]

16.65.380 Adequate facilities and space required for veterinarians to function. Public livestock market facilities shall include adequate space and facilities necessary for deputy state veterinarians to properly carry out their functions as prescribed by law and rules and regulations adopted hereunder. [1959 c 107 § 38.]

16.65.390 Adequate space and facilities required for brand inspectors to function. Public livestock market facilities shall include space and facilities necessary for brand inspectors to properly carry out their duties, as provided by law and rules and regulations adopted hereunder, in a safe and expeditious manner. [1959 c 107 § 39.]

16.65.400 Weighing of livestock at public livestock market. (1) Each public livestock market licensee shall maintain and operate approved weighing facilities for the weighing of livestock at such licensee's public livestock market.

(2) All dial scales used by the licensee shall be of adequate size to be readily visible to all interested parties and shall be equipped with a mechanical weight recorder.

(3) All beam scales used by the licensee shall be equipped with a balance indicator, a weigh beam and a mechanical weight recorder, all readily visible to all interested parties.

(4) All scales used by the licensee shall be checked for balance at short intervals during the process of selling and immediately prior to the beginning of each sale day.

(5) The scale ticket shall have the weights mechanically imprinted upon such tickets when the weigh beam is in balance during the process of weighing, and shall be issued in triplicate, for all livestock weighed at a public livestock market. A copy of such weight tickets shall be issued to the buyer and seller of the livestock weighed. [1983 c 298 § 15; 1961 c 182 § 5; 1959 c 107 § 40.]

16.65.410 Packer's interest in market limited. It shall be unlawful for a packer to own or control more than a twenty percent interest in any public livestock market, directly or indirectly through stock ownership or control, or otherwise by himself or through his agents or employees. [1959 c 107 § 41.]

16.65.420 Application for sales day for new salesyard, change of or additional sales days, special sales—Considerations for allocation. (1) Any application for sales days or days for a new salesyard, and any application for a change of sales day or days or additional sales day or days for an existing yard shall be subject to approval by the director, subsequent to a hearing as provided for in this chapter and the director is hereby authorized to allocate these dates and type and class of livestock which may be sold on these dates. In considering the allocation of such sales days, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The geographical area which will be affected;

(b) The conflict, if any, with sales days already allocated in the area;

(c) The amount and class of livestock available for marketing in the area;

(d) Buyers available to such market;

(e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the director in writing fifteen days prior to such proposed sale and such sale date shall be approved at the discretion of the director.

(3) In any case that a licensee fails to conduct sales on the sales days allocated to the licensee, the director shall, subsequent to a hearing, be authorized to revoke an allocation for nonuse. The rate of usage required to maintain an allocation shall be established by rule. [1991 c 17 § 3; 1963 c 232 § 16; 1961 c 182 § 6. Prior: 1959 c 107 § 42.]

16.65.422 Special sales of purebred livestock. A producer of purebred livestock may, upon obtaining a permit from the director, conduct a public sale of the purebred livestock on an occasional or seasonal basis on premises other than his own farm. Application for such special sale shall be in writing to the director for his approval at least fifteen days before the proposed public sale is scheduled to be held by such producer. [1963 c 232 § 17.]

16.65.423 Limited public livestock market license, sale of horses and/or mules—Sales days. The director shall have the authority to issue a public livestock market license pursuant to the provisions of this chapter limited to the sale of horses and/or mules and to allocate a sales day or days to such licensee. The director is hereby authorized and directed to adopt regulations for facilities and sanitation applicable to such a license. The facility requirements of RCW 16.65.360 shall not be applicable to such licensee's operation as provided for in this section. [1983 c 298 § 16; 1963 c 232 § 18.]

16.65.424 Additional sales days limited to sales of horses and/or mules. The director shall have the authority to grant a licensee an additional sales day or days limited to the sale of horses and/or mules and may if requested grant the licensee, by permit, the authority to have the sale at premises other than at his public livestock market if the facilities are approved by the director as being adequate for the protection of the health and safety of such horses and/or mules. For the purpose of such limited sale the facility requirements of RCW 16.65.360 shall not be applicable. [1963 c 232 § 19.]

16.65.430 Information and records available to director and news services. Information and records of the licensee that are necessary for the compilation of adequate reports on the marketing of livestock shall be made available to the director or any news service, publishing or broadcasting such market reports. [1959 c 107 § 43.]

16.65.440 Penalty. Any person who shall violate any provisions or requirements of this chapter or rules and regulations adopted by the director pursuant to this chapter shall be deemed guilty of a misdemeanor; and any subsequent violation thereafter shall be deemed a gross misdemeanor. [1959 c 107 § 44.]

16.65.445 Hearings. The director shall hold public hearings upon a proposal to promulgate any new or amended regulations and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other adjudicative proceeding, and shall comply in all respects with chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 55; 1961 c 182 § 7.]

Effective date—1989 c 175: See note following RCW 34.05.010.

16.65.450 Orders—Appeal. Any licensee or applicant who feels aggrieved by an order of the director may appeal to the superior court of the county in the state of Washington of the residence of the licensee or applicant where the trial on such appeal shall be held de novo. [1991 c 17 § 4; 1959 c 107 § 46.]

16.65.900 Severability—1959 c 107. If any section or provision of this chapter shall be adjudged to be invalid

or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 107 § 45.]

16.65.910 Severability—1963 c 232. See RCW 15.61.900.

Chapter 16.67
WASHINGTON STATE BEEF COMMISSION

Sections

16.67.010 Short title. This chapter shall be known and may be cited as the Washington state beef commission act. [1969 c 133 § 1.]

16.67.020 Purpose of chapter. This chapter is passed:

(1) In the exercise of the power of the state to provide for economic development of the state, to promote the welfare of the state, and stabilize and protect the beef industry of the state;

(2) Because the beef and beef products produced in Washington comprise one of the major agricultural crops of Washington, and therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(3) Because it is desirable and expedient to enhance the reputation of Washington beef and beef products in domestic, national and international markets;

(4) Because it is desirable to promote knowledge of the health-giving qualities, food and dietetic value of beef and beef products of the nation and Washington beef and beef products in particular for the expanded development of the beef industry;

(5) Because the stabilizing of the beef industry, the enlargement of its markets, and the increased consumption of beef and beef products are desirable to assure payment of taxes to the state and its subdivisions, to alleviate unemployment and to provide for higher wage scales for agricultural labor and maintenance of our high standard of living;

(6) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only beef and beef products of the highest standard of quality, the methods and care used in their preparation for market, and the methods of sale and distribution, to increase the amount secured by the producer therefor, so they may pay higher wages and pay their taxes, and by such information reduce the cost of marketing and distribution to the extent that the spread between the cost to consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and

(7) To protect the public by educating it in reference to the various cuts and grades of Washington beef and the uses to which each should be put. [1969 c 133 § 19.]

16.67.030 Definitions. For the purpose of this chapter:

(1) "Commission" means the Washington state beef commission.

(2) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.

(3) "Ex officio members" means those advisory members of the commission who do not have a vote.

(4) "Department" means the department of agriculture of the state of Washington.

(5) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(6) "Beef producer" means any person who raises, breeds, grows, or purchases cattle or calves for beef production.

(7) "Dairy (beef) producer" means any person who raises, breeds, grows, or purchases cattle for dairy production and who is actively engaged in the production of fluid milk.

(8) "Feeder" means any person actively engaged in the business of feeding cattle and usually operating a feed lot.

(9) "Producer" means any person actively engaged in the cattle industry including beef producers and dairy (beef) producers.

(10) "Washington cattle" shall mean all cattle owned or controlled by affected producers and located in the state of Washington.

(11) "Meat packer" means any person licensed to operate a slaughtering establishment under the provisions of chapter 16.49A RCW as enacted or hereafter amended.

(12) "Livestock salesyard operator" means any person licensed to operate a cattle auction market or salesyard under the provisions of chapter 16.65 RCW as enacted or hereafter amended. [1969 c 133 § 2.]

16.67.040 Beef commission created—Generally. There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of three beef producers, two dairy (beef) produc-

ers, three feeders, one livestock salesyard operator, and one meat packer. In addition there will be one ex officio member without the right to vote from the department of agriculture to be designated by the director thereof.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he represents for a period of five years, and has during that period derived a substantial portion of his income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office. [1991 c 9 § 1; 1969 c 133 § 3.]

16.67.050 Designation of positions—Terms. The appointive positions on the commission shall be designated as follows: The three beef producers shall be designated positions one, two and three; one dairy (beef) producer shall be designated position four and one, position ten; the three feeders shall be designated positions five, six and seven; the livestock salesyard operator shall be designated position eight; the meat packer shall be designated position nine.

The regular term of office shall be three years from the date of appointment and until their successors are appointed. However, the first term of office for position ten shall terminate July 1, 1994, and the first terms of the members whose terms began on July 1, 1969 shall be as follows: Positions one, four and seven shall terminate July 1, 1970; positions two, five and eight shall terminate July 1, 1971; positions three, six and nine shall terminate July 1, 1972. [1991 c 9 § 2; 1969 c 133 § 4.]

16.67.060 Director to appoint members. The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made to him or her by organizations who represent or who are engaged in the same type of production or business as the person recommended for appointment as a member of the commission. [1991 c 9 § 3; 1969 c 133 § 5.]

16.67.070 Vacancies—Compensation and travel expenses. In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of such position shall be filled by the director forthwith.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1991 c 9 § 4; 1984 c 287 § 19; 1975-'76 2nd ex.s. c 34 § 22; 1969 c 133 § 6.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

16.67.080 Commission records as evidence. Copies of the proceedings, records, and acts of the commission, when certified by the secretary of the commission and authenticated by the commission seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1969 c 133 § 7.]

16.67.090 Powers and duties. The powers and duties of the commission shall include the following:

(1) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(2) To elect a chairman and such other officers as it deems advisable;

(3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the commission determines are necessary and proper to carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;

(4) To adopt, rescind, and amend rules, regulations and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as now or hereafter amended;

(5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books and minutes of the commission shall be kept at such headquarters;

(6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(9) To incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys and other financial transactions made and done pursuant to this chapter. Such records, books and accounts shall be audited

at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor and the commission. On such years and in such event the state auditor is unable to audit the records, books and accounts within six months following the close of the audit period it shall be mandatory that the commission employ a private auditor to make such audit;

(12) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(13) To cooperate with any other local, state, or national commission, organization or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry;

(14) To accept grants, donations, contributions or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter;

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states. [1982 c 81 § 3; 1969 c 133 § 8.]

16.67.100 Meetings—Notice. The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the commission.

The commission shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the commission at least ten days prior to the meeting by public notice of such meeting published in newspapers of general circulation in the state of Washington, by radio and press releases and through trade publications.

The commission shall establish by resolution, the time, place and manner of calling special meetings of the commission with reasonable notice to the members: PROVIDED, That, the notice of any special meeting may be waived by a waiver thereof by each member of the commission. [1969 c 133 § 9.]

16.67.110 Promotional programs, research, rate studies, labeling. The commission shall provide for programs designed to increase the consumption of beef; develop more efficient methods for the production, processing, handling and marketing of beef; eliminate transportation rate inequalities on feed grains and supplements and other production supplies adversely affecting Washington producers; properly identify beef and beef products for consumers as to quality and origin. For these purposes the commission may:

(1) Provide for programs for advertising, sales promotion and education, locally, nationally or internationally, for maintaining present markets and/or creating new or larger markets for beef. Such programs shall be directed toward increasing the sale of beef without reference to any particular brand or trademark and shall neither make use of false or unwarranted claims in behalf of beef nor disparage the quality, value, sale or use of any other agricultural commodity;

(2) Provide for research to develop and discover the health, food, therapeutic and dietetic value of beef and beef products thereof;

(3) Make grants to research agencies for financing studies, including funds for the purchase or acquisition of equipments and facilities, in problems of beef production, processing, handling and marketing;

(4) Disseminate reliable information founded upon the research undertaken under this chapter or otherwise available;

(5) Provide for rate studies and participate in rate hearings connected with problems of beef production, processing, handling or marketing; and

(6) Provide for proper labeling of beef and beef products so that the purchaser and the consuming public of the state will be readily apprised of the quality of the product and how and where it was processed. [1969 c 133 § 10.]

16.67.120 Levy of assessment—Exemption—Levy and collection under federal order. (1) Except as provided in subsection (2) of this section, there is hereby levied an assessment of fifty cents per head on all Washington cattle sold in this state or elsewhere to be paid by the seller at the time of sale: PROVIDED, That if the assessment levied pursuant to this section is greater than one percent of the sales price, the animal is exempt from the assessment unless the federal order implementing the national beef promotion and research program establishes an assessment on these animals: PROVIDED FURTHER, That if such sale is accompanied by a brand inspection by the department such assessment shall be collected at the same time, place and in the same manner as brand inspection fees. Such fees shall be collected by the livestock services division of the department and transmitted to the commission: PROVIDED FURTHER, That, if such sale is made without a brand inspection by the department the assessment shall be paid by the seller and transmitted directly to the commission not later than thirty days following the sale.

(2) While the federal order implementing the national beef promotion and research program is in effect, the assessment to be levied and the procedures for its collection shall be as required by the federal order and as described by rules adopted by the commission. [1987 c 393 § 11; 1986 c 190 § 2; 1982 c 47 § 1; 1975 1st ex.s. c 93 § 1; 1969 c 133 § 11.]

16.67.122 Additional assessment—National beef research and promotion program—Contingency. In addition to the assessment authorized pursuant to RCW 16.67.120, the commission shall have the authority to collect an additional assessment of fifty cents per head for cattle subject to assessment by federal order for the purpose of providing funds for a national beef promotion and research program. The manner in which this assessment will be levied and collected shall be established by rule. The authority to collect this assessment shall be contingent upon

the implementation of federal legislation providing for a national beef promotion and research program and the establishment of the assessment requirement to fund its activities. [1986 c 190 § 1.]

16.67.123 Transfer of cattle by meat packer as sale. The transfer of cattle owned by a meat packer from a feed lot to a slaughterhouse for slaughter shall be deemed a sale of such cattle for the purpose of chapter 16.67 RCW. Such packer shall pay directly to the beef commission the same assessment as required of all other cattle owners selling cattle. [1971 c 64 § 1.]

16.67.130 Assessments personal debt—Delinquent charge—Civil action to collect. Any due and payable assessment levied under the provisions of this chapter shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable within thirty days from the date it becomes first due the commission. In the event any such person fails to pay the full amount within such thirty days, the commission shall add to such unpaid assessment an amount of ten percent of the unpaid assessment to defray the cost of collecting the same. In the event of failure of such person to pay such due and payable assessment, the commission may bring civil action against such person in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon and any other additional necessary reasonable costs including attorneys' fees. Such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 133 § 12.]

16.67.140 Livestock purchasers to provide list of sellers to commission. The commission may adopt regulations requiring the purchasers of livestock subject to the assessments under this chapter, to furnish the commission with the names of persons from whom such livestock was purchased. Refusal or failure to furnish the commission with such a list shall constitute a misdemeanor. [1969 c 133 § 13.]

16.67.150 Sales of milk production animals exempted from assessment—Exception. The assessment provided for in RCW 16.67.120 shall not be applicable to any animal sold for milk production unless the federal order implementing the national beef promotion and research program establishes an assessment on the animals. [1986 c 190 § 3; 1969 c 133 § 14.]

16.67.160 Liability of commission's assets—Immunity of state, commission employees, etc. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission including employees of the commission shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member. [1969 c 133 § 15.]

16.67.170 Promotional printing not restricted by public printer laws. The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for the commission. [1969 c 133 § 16.]

16.67.900 Liberal construction—1969 c 133. This chapter shall be liberally construed. [1969 c 133 § 20.]

16.67.910 Severability—1969 c 133. If any provisions hereof are declared invalid, the validity of the remainder hereof of the applicability thereof to any other person, circumstances or thing shall not be affected thereby. [1969 c 133 § 17.]

16.67.920 Effective date—1969 c 133. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1969. [1969 c 133 § 21.]

Chapter 16.68
DISPOSAL OF DEAD ANIMALS

Sections

16.68.010 Definitions. For the purposes of this chapter, unless clearly indicated otherwise by the context:

(1) "Director" means the director of agriculture;

(2) "Meat food animal" means cattle, horses, mules, asses, swine, sheep and goats;

(3) "Dead animal" means the body of a meat food animal, or any part or portion thereof: PROVIDED, That the following dead animals are exempt from the provisions of this chapter:

(a) Edible products from a licensed slaughtering establishment;

(b) Edible products where the meat food animal was slaughtered under farm slaughter permit;

(c) Edible products where the meat food animal was slaughtered by a bona fide farmer on his own ranch for his own consumption;

(d) Hides from meat food animals that are properly identified as to ownership and brands;

(4) "Carcass" means all parts, including viscera, of a dead meat food animal;

(5) "Person" means any individual, firm, corporation, partnership, or association;

(6) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other byproduct whatsoever;

(7) "Substation" means a properly equipped and authorized concentration site for the temporary storage of dead animals or packing house refuse pending final delivery to a licensed rendering plant;

(8) "Place of transfer" means an authorized reloading site for the direct transfer of dead animals or packing house refuse from the vehicle making original pickup to the line vehicle that will transport the dead animals or packing house refuse to a specified licensed rendering plant;

(9) "Independent collector" means any person who does not own a licensed rendering plant within the state of Washington but is properly equipped and licensed to transport dead animals or packing house refuse to a specified rendering plant. [1949 c 100 § 1; Rem. Supp. 1949 § 3142-1.]

Severability—1949 c 100: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, nor any section, sentence, phrase, or word thereof not adjudged invalid or unconstitutional." [1949 c 100 § 20.] This applies to RCW 16.68.010 through 16.68.190.

16.68.020 Duty to bury carcass of diseased animal—Dead animal presumed diseased. Every person owning or having in charge any animal that has died or been killed on account of disease shall immediately bury the carcass thereof to such a depth that no part of the carcass shall be nearer than three feet from the surface of the ground. Any animal found dead shall be presumed to have died from and on account of disease. [1949 c 100 § 2; Rem. Supp. 1949 § 3142-2.]

16.68.030 Sale, gift, or conveyance prohibited—Exceptions. It is unlawful for any person to sell, offer for sale or give away a dead animal or convey the same along any public road or land not his own: PROVIDED, That dead animals may be sold or given away to and legally transported on highways by a person having an unrevoked, annual license to operate a rendering plant or by a person having an unrevoked, annual license to operate as an independent collector. [1949 c 100 § 3; Rem. Supp. 1949 § 3142-3.]

16.68.040 License required of rendering plants and independent collectors. It is unlawful for any person to operate a rendering plant or act as an independent collector without first obtaining a license from the director. [1949 c 100 § 4; Rem. Supp. 1949 § 3142-4.]

16.68.050 Rendering plant license fee. Any person engaged in operating a rendering plant shall secure from the director an annual rendering plant license and pay an annual fee of one hundred dollars: PROVIDED, That no license shall be required to operate a rendering plant on the premises of a licensed slaughtering establishment maintaining state or federal meat inspection unless said rendering plant receives dead animals that have been transported on public highways. [1949 c 100 § 5; Rem. Supp. 1949 § 3142-5.]

16.68.060 Independent collector license fee. Any person engaged in the business of independent collector shall secure from the director an annual independent collector license and pay an annual fee of fifty dollars. [1949 c 100 § 6; Rem. Supp. 1949 § 3142-6.]

16.68.070 Substation or places of transfer license fee. Any rendering plant operator or independent collector that operates substations or places of transfer shall secure from the director an annual substation license or place of transfer license and pay an annual fee of twenty-five dollars for each substation or place of transfer. [1949 c 100 § 7; Rem. Supp. 1949 § 3142-7.]

16.68.080 Expiration of license—Revocation. Any license or permit issued under this chapter shall expire on the thirtieth day of June next subsequent to the date of issue, and may be sooner revoked by the director or his authorized representative for violations of this chapter. Any licensee or permittee under this chapter shall have the right to demand a hearing before the director before a revocation is made permanent. [1949 c 100 § 8; Rem. Supp. 1949 § 3142-8.]

16.68.090 Applications for license. Any person applying for a license to operate a rendering plant and/or substation and/or place of transfer, or to act as an independent collector shall make application on forms furnished by the director. Said application shall give all information required by the director and shall be accompanied by the required license fee. [1949 c 100 § 9; Rem. Supp. 1949 § 3142-9.]

16.68.100 Procedure upon application—Inspection of premises. If the director finds that the locations, buildings, substations equipment, vehicles, places of transfer, or proposed method of operation do not fully comply with the requirements of this chapter, he shall notify the applicant by registered letter wherein the same fails to comply. If the applicant whose plant or operation failed to comply notifies the director within ten days from the receipt of the registered letter that he will discontinue operations, the fee accompany-

ing the application will be returned to him; otherwise no part of the fee will be refunded. If the applicant whose plant failed to comply within a reasonable time, to be fixed by the director or his authorized representative, notifies the director that such defects are remedied, a second inspection shall be made. Not more than two inspections may be made on one application. [1949 c 100 § 10; Rem. Supp. 1949 § 3142-10.]

16.68.110 Duty of licensees as to premises. Every licensee under this chapter must comply with the following:

(1) All floors shall be constructed of concrete or other impervious material, shall be kept reasonably clean and in good repair. Floors shall slope at least one-fourth inch to the foot toward drains, and slope at least three-eighths inch to the foot as the drains are approached.

(2) Adequate sanitary drainage must be provided leading to approved grease traps and approved sewage disposal system. No point on the floor shall be over sixteen feet from a drain.

(3) Suitable disposal of paunch contents must be provided in accordance with sanitary regulations.

(4) Walls shall be of impervious material to a height not less than six feet from the floor with a tight union with the floor.

(5) Potable water supply shall be provided for human consumption, washing and cleaning.

(6) Ample steam shall be provided for cleaning purposes.

(7) Approved toilet and dressing room facilities must be provided for employees.

(8) The building must be kept free from flies, rats, mice, and cockroaches.

(9) Premises must be kept neat and orderly and all buildings must be attractive in appearance.

(10) All rendering plants, substations, and places of transfer shall be so located, arranged, constructed and maintained, and the operation so conducted at all times as to be consistent with public health and safety.

(11) Suitable facilities for the dipping, washing and disinfecting of hides obtained from animals that died or were killed on account of an infectious or contagious disease, shall be provided.

(12) Two copies of building or remodeling plans shall be forwarded to the director for his approval before such building or remodeling is begun. [1949 c 100 § 12; Rem. Supp. 1949 § 3142-12.]

16.68.120 Duty of licensees—Standards. Every licensee under this chapter shall comply with the following:

(1) Dead animals shall be placed in containers or vehicles which are constructed of or lined with impervious material, and which do not permit the escape of any liquid, and which are covered in such a way that the contents shall not be openly exposed to insects.

(2) All vehicles and containers used for transporting dead animals shall be properly cleaned and disinfected before leaving the premises of a rendering plant, substation or place of transfer.

(3) After original loading, dead animals shall not be moved from the transporting container or vehicle upon a public highway or in any other place, except at a licensed rendering plant, licensed substation, or licensed place of transfer.

(4) No containers and vehicles used for transporting dead animals shall be used for the transporting of live animals except to a licensed rendering plant.

(5) All vehicles used to haul dead animals that have died of an infectious or contagious disease, shall proceed directly to the unloading point and shall not enter other premises until the vehicle has been properly cleaned and disinfected.

(6) The name of the rendering plant or independent collector shall be painted in letters at least four inches high on each side of every truck used for transporting dead animals.

(7) The skinning and dismembering of dead animals shall be done in the building where they are processed.

(8) Cooking vats or tanks shall be airtight except for proper escape for steam or vapor.

(9) Steam or vapor from cooking vats or tanks shall be so disposed of as not to be detrimental to public health or safety.

(10) Dead animals shall be processed within forty-eight hours after delivery to the rendering plant.

(11) No carcasses, parts thereof, or packing house refuse under process for marketing shall be permitted to come in contact with any part of the building or the equipment used in connection with the unloading, skinning, dismembering and grinding of carcasses or refuse as originally received at disposal plant. [1949 c 100 § 13; Rem. Supp. 1949 § 3142-13.]

16.68.130 Right of access to premises and records. The director or his authorized agent, shall have free and uninterrupted access to all parts of premises that come under the provisions of this chapter, for the purpose of making inspections and the examination of records. [1949 c 100 § 14; Rem. Supp. 1949 § 3142-14.]

16.68.140 Unlawful possession of horse meat—Exceptions. It shall be unlawful for any person to transport, to sell, offer to sell, or have on his premises horse meat for other than human consumption unless said horse meat is decharacterized in a manner prescribed by the director: PROVIDED, That this provision shall not apply to carcasses slaughtered by a farmer for consumption on his own ranch or to carcasses in the possession of a person licensed under this chapter, or to canned horse meat meeting United States bureau of animal industry regulations. [1949 c 100 § 15; Rem. Supp. 1949 § 3142-18.]

16.68.150 Feeding of carcasses to swine unlawful—Exception. It shall be unlawful to feed carcasses of animals, or any part or portion thereof, to swine, unless said carcasses or portions thereof are cooked in a manner prescribed by the director. [1949 c 100 § 16; Rem. Supp. 1949 § 3142-20.]

Swine, garbage feeding: RCW 16.36.103 through 16.36.110.

16.68.160 Disposition of fees. Funds collected for license fees and inspection fees shall be retained by the

director to be used for the enforcement of this chapter. [1949 c 100 § 11; Rem. Supp. 1949 § 3142-11.]

16.68.170 Rules and regulations. The director is authorized and shall make and enforce such regulations as may be necessary to effectuate the provisions of this chapter. Such regulations shall be consistent with the provisions of this chapter. [1949 c 100 § 17; Rem. Supp. 1949 § 3142-21.]

16.68.180 Penalty for violations. The violation of any provision of this chapter shall be a misdemeanor. [1949 c 100 § 18; Rem. Supp. 1949 § 3142-22.]

16.68.190 Exception as to use for bait for trapping purposes. Nothing in this chapter shall prohibit the state department of wildlife from using the carcasses of dead animals for trap bait in their regular trapping operations. [1988 c 36 § 7; 1949 c 100 § 18A; Rem. Supp. 1949 § 3142-23.]

Chapter 16.70
CONTROL OF PET ANIMALS INFECTED WITH DISEASES COMMUNICABLE TO HUMANS

Sections

16.70.010 Purpose. The incidence of disease communicated to human beings by contact with pet animals has shown an increase in the past few years. The danger to human beings from such pets infected with disease communicable to humans has demonstrated the necessity for legislation to authorize the secretary of the department of health and the state board of health to take such action as is necessary to control the sale, importation, movement, transfer, or possession of such animals where it becomes necessary in order to protect the public health and welfare. [1991 c 3 § 2; 1971 c 72 § 1.]

16.70.020 Definitions. The following words or phrases as used in this chapter shall have the following meanings unless the context indicates otherwise:

(1) "Pet animals" means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet.

(2) "Secretary" means the secretary of the department of health or his or her designee.

(3) "Department" means the department of health.

(4) "Board" means the Washington state board of health.

(5) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(6) "Quarantine" means the placing and restraining of any pet animal or animals by direction of the secretary, either within a certain described and designated enclosure or area within this state, or the restraining of any such pet animal or animals from entering this state. [1991 c 3 § 3; 1971 c 72 § 2.]

16.70.030 Emergency action authorized—Scope—Animals as public nuisance. In the event of an emergency arising out of an outbreak of communicable disease caused by exposure to or contact with pet animals, the secretary is hereby authorized to take any reasonable action deemed necessary by him to protect the public health, including but not limited to the use of quarantine or the institution of any legal action authorized pursuant to Title 7 RCW and RCW 43.20A.640 through 43.20A.650.

The secretary shall have authority to destroy any pet animal or animals which may reasonably be suspected of having a communicable disease dangerous to humans and such animal or animals are hereby declared to be a public nuisance. [1971 c 72 § 3.]

Reviser's note: "RCW 43.20.150 through 43.20.170" were translated to "RCW 43.20A.640 through 43.20A.650" due to their recodification from chapter 43.20 RCW to chapter 43.20A RCW by 1979 c 141 § 384. Subsequently, RCW 43.20A.640 through 43.20A.650 were recodified as RCW 43.70.170 through 43.70.190, pursuant to 1989 1st ex.s. c 9 § 267, effective July 1, 1989.

16.70.040 Rules and regulations—Scope. The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules and regulations for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined herein which are reasonably necessary for the protection and welfare of the people of this state. [1971 c 72 § 4.]

16.70.050 Violations—Penalty. Any person violating or refusing or neglecting to obey the order or directive issued by the secretary pursuant to the authority granted under this action [act] or the rules and regulations promulgated by the board hereunder shall be guilty of a misdemeanor. [1971 c 72 § 5.]

16.70.060 Concurrent powers—Cooperation between officials. The powers conferred on the secretary by this chapter shall be concurrent with the powers conferred on the director of the department of agriculture by chapter 16.36 RCW, and chapter 43.23 RCW, and the secretary and director shall cooperate in exercising their responsibilities in these areas. [1971 c 72 § 6.]

Chapter 16.72
FUR FARMING

Sections

16.72.010 Definitions. As used in this chapter:

"Director" means director of agriculture.

"Department" means department of agriculture.

"Person" includes any individual, firm corporation, trust, association, copartnership, society, or other organization of individuals and any other business unit, device or arrangement.

"Fur farming" means breeding, raising and rearing of mink, marten, fox and chinchilla in captivity or enclosures. [1955 c 321 § 2.]

16.72.020 Quarantine controls. Fur farming shall be deemed an agricultural pursuit and the director is hereby authorized to exercise quarantine controls over such farms in accordance with the provisions of this title. Facilities available to the department may be used by the director in carrying out the provisions of this chapter. [1955 c 321 § 3.]

16.72.030 Fox, mink, marten declared personalty. All fox, mink and marten that have been lawfully imported or acquired, or bred or reared in captivity or enclosures, are declared to be personal property. Any person hereafter acquiring any such fur bearing animals in the wild state, shall within ten days furnish satisfactory proof to the director that such animals were lawfully obtained. Such wild animals shall not become personal property under the provisions of this section until such proof is furnished. [1955 c 321 § 4.]

16.72.040 Branding—Recording. The owners of any fox, mink, or marten may mark them by branding with tattoo or other marks for the purpose of identification, but no person shall be entitled to ownership in or rights under any particular branding marks unless and until the branding marks are recorded with the department in the same manner and with like effect as brands of other animals are recorded as provided in *chapter 16.56 RCW. [1955 c 321 § 5.]

***Reviser's note:** Chapter 16.56 RCW was repealed by 1959 c 54 § 39. For later enactment, see chapter 16.57 RCW.

Chapter 16.74
WASHINGTON WHOLESOME POULTRY PRODUCTS ACT

Sections

Poultry and poultry products—Label requirements: RCW 69.04.333 through 69.04.335.

16.74.010 Short title. This chapter shall be known and designated as the "Washington wholesome poultry products act". [1969 ex.s. c 146 § 1.]

16.74.020 Purposes of chapter. The purposes of this chapter are to adopt new legislation governing poultry and poultry products and to promote uniformity of state legislation with the federal poultry products inspection act. Poultry and poultry products are an important source of the state's total supply of food. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Poultry and poultry products not reaching these standards are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and poultry which are regulated under this chapter substantially affect the public and that regulation by the director as contemplated by this chapter is appropriate to protect the health and welfare of consumers. [1969 ex.s. c 146 § 2.]

16.74.030 Definitions govern construction. The definitions in RCW 16.74.040 through 16.74.280, unless the context otherwise requires, shall govern the construction of this chapter. [1969 ex.s. c 146 § 3.]

16.74.040 "Department." "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 146 § 4.]

16.74.050 "Director." "Director" means the director of the department of agriculture or his authorized representative. [1969 ex.s. c 146 § 5.]

16.74.060 "Person." "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors. [1969 ex.s. c 146 § 6.]

16.74.070 "Poultry." "Poultry" includes but is not limited to chickens, turkeys, ducks, geese, or any other bird used for human consumption whether live or slaughtered. [1969 ex.s. c 146 § 7.]

16.74.080 "Poultry products." "Poultry products" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass, or part thereof, excepting poultry products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempted by the director from definition as a poultry product under such conditions as the director may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products. [1969 ex.s. c 146 § 8.]

16.74.090 "Adulterated." "Adulterated" shall apply to any poultry product under one or more of the following circumstances:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2) If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) and is an added poisonous or added deleterious substance (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; (b) a food additive; or (c) a color additive) which may, in the judgment of the director make such article unfit for human food;

(3) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392 as it is now or hereafter amended;

(4) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394 as it is now or hereafter amended;

(5) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396 as it is now or hereafter amended: PROVIDED, That an article which is not otherwise deemed adulterated under subsections (2), (3), or (4) of this section, shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the director in official establishments;

(6) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(7) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(8) If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(11) If any valuable constituent has been in whole or in part omitted or abstracted therefrom, or if any substance has

been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1969 ex.s. c 146 § 9.]

16.74.100 "Misbranded." "Misbranded" shall apply to any poultry product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing (a) the name and the place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count: PROVIDED, That under part (b) of this subsection (5), reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established by regulations prescribed by the director;

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the director under RCW 16.74.350 unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the director under RCW 16.74.350, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of subsection (7) of this section, unless its label bears (a) the common or usual name of the food, if there be any, and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the director, be designated as spices, flavorings, and colorings without naming each: PROVIDED, That to the extent that compliance with the requirements of part (b) of this subsection (9) is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director;

(10) If it purports to be or is represented for special dietary uses unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the director determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: PROVIDED, That, to the extent that compliance with the requirements of this subsection (11) is impracticable, exemptions shall be established by regulations promulgated by the director; or

(12) If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses directly thereon, as the director may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. [1969 ex.s. c 146 § 10.]

16.74.110 "Inspector." "Inspector" means an employee or official of the department authorized by the director to inspect poultry and poultry products under the authority of this chapter. [1969 ex.s. c 146 § 11.]

16.74.120 "Official mark." "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article or poultry under this chapter. [1969 ex.s. c 146 § 12.]

16.74.130 "Official inspection legend." "Official inspection legend" means any symbol prescribed by regulations of the director showing that an article was inspected and passed in accordance with this chapter. [1969 ex.s. c 146 § 13.]

16.74.140 "Official certificate." "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter. [1969 ex.s. c 146 § 14.]

16.74.150 "Official device." "Official device" means any device prescribed or authorized by the director for use in applying any official mark. [1969 ex.s. c 146 § 15.]

16.74.160 "Official establishment." "Official establishment" means any establishment licensed by the department at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this chapter. [1969 ex.s. c 146 § 16.]

16.74.170 "Inspection service." "Inspection service" means the animal industry division of the department having the responsibility for carrying out the provisions of this chapter. [1969 ex.s. c 146 § 17.]

16.74.180 "Container", "package." "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover. [1969 ex.s. c 146 § 18.]

16.74.190 "Label", "labeling." "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article; and the term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1969 ex.s. c 146 § 19.]

16.74.200 "Shipping container." "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. [1969 ex.s. c 146 § 20.]

16.74.210 "Immediate container." "Immediate container" means any consumer package, or any other container in which poultry products, not consumer packaged, are packed. [1969 ex.s. c 146 § 21.]

16.74.220 "Capable of use as human food." "Capable of use as human food" means any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the director to deter its use as human food, or it is naturally inedible by humans. [1969 ex.s. c 146 § 22.]

16.74.230 "Processed." "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed. [1969 ex.s. c 146 § 23.]

16.74.240 "Uniform Washington food, drug and cosmetic act." "Uniform Washington food, drug and cosmetic act" means the act so entitled, as now or hereafter amended. [1969 ex.s. c 146 § 24.]

Uniform Washington food, drug, and cosmetic act: Chapter 69.04 RCW.

16.74.250 "Pesticide chemical", "food additive", "color additive", "raw agricultural commodity." "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the uniform Washington food, drug and cosmetic act as now or hereafter amended. [1969 ex.s. c 146 § 25.]

16.74.260 "Poultry products broker." "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person. [1969 ex.s. c 146 § 26.]

16.74.270 "Renderer." "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, of poultry, except rendering conducted under inspection or exemption under this chapter. [1969 ex.s. c 146 § 27.]

16.74.280 "Animal food manufacturer." "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry. [1969 ex.s. c 146 § 28.]

16.74.290 "Intrastate commerce." "Intrastate commerce" means any article in intrastate commerce whether such article is alive or processed and is intended for sale, held for sale, offered for sale, sold, stored, transported or handled in this state in any manner and prepared for eventual distribution to consumers in this state whether at wholesale or retail. [1969 ex.s. c 146 § 64.]

16.74.300 Preslaughter inspection. In order to protect the public health by preventing the processing and distribution of unwholesome or adulterated poultry products in this state, the director shall when he deems it necessary cause to be made by inspectors preslaughter inspection of poultry in each official establishment processing poultry or poultry products. [1969 ex.s. c 146 § 29.]

16.74.310 Post mortem inspection. The director, whenever processing operations are being conducted, shall cause to be made by inspectors post mortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as a human food in each official establishment processing such poultry or poultry products. [1969 ex.s. c 146 § 30.]

16.74.320 Condemnation of adulterated carcasses and products—Appeal. All poultry carcasses and parts thereof and other poultry products found to be adulterated shall be condemned and shall if no appeal be taken from such determination of condemnation be destroyed for human food purposes under the supervision of an inspector: PROVIDED, That carcasses, parts and products which by processing may be made not adulterated, need not be so condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the carcasses, parts, or products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal cost shall be at the cost of the appellant if the director determines the appeal is frivolous. If the determination of the condemnation is sustained the carcasses, parts and products shall be destroyed for human food purposes under the supervision of an inspector. [1969 ex.s. c 146 § 31.]

16.74.330 Sanitary practices. Each official establishment slaughtering poultry or processing poultry products subject to the provisions of this chapter shall have such

premises, facilities and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the director for the purpose of preventing the processing, distribution or sale of poultry products which are adulterated. [1969 ex.s. c 146 § 32.]

16.74.340 Information to be on containers after inspection. All poultry products inspected at any official establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, on their shipping containers and immediate containers, and in the case of nonconsumer packaged carcasses directly thereon, as the director may require, the information required under RCW 16.74.100. [1969 ex.s. c 146 § 33.]

16.74.350 Director may prescribe labeling, standards of identity and standards of fill requirements. The director whenever he determines such action is necessary for the protection of the public, may prescribe: (1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or poultry subject to this chapter; (2) definitions and standards of identity or composition of articles subject to this chapter and standards of fill of container for such articles not inconsistent with any such standards established under the uniform Washington food, drug and cosmetic act. [1969 ex.s. c 146 § 34.]

16.74.360 False, misleading markings prohibited. No article subject to this chapter shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers, which are not false or misleading and which are approved by the director, are permitted. [1969 ex.s. c 146 § 35.]

16.74.370 Director may withhold use of marking or labeling—Hearing—Appeal. If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling, or container does not accept the determination of the director, such person may request a hearing under chapter 34.05 RCW, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business or to the superior court for Thurston county. [1989 c 175 § 56; 1969 ex.s. c 146 § 36.]

Effective date—1989 c 175: See note following RCW 34.05.010.

16.74.380 Prohibited practices. No person shall:

(1) Slaughter any poultry or process any poultry products which are capable of use as human food at any establishment processing any such articles for intrastate commerce, except in compliance with the requirements of this chapter;

(2) Sell, knowingly transport, offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in this state (a) any poultry products which are capable of use as human food and which are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (b) any poultry products required to be inspected under this chapter unless they have been so inspected and passed;

(3) Do, with respect to any poultry products which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such products to be adulterated or misbranded;

(4) Sell, knowingly transport, offer for sale or transportation, knowingly receive for transportation, in this state or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head or viscera have not been removed in accordance with regulations promulgated by the director, except as may be authorized by regulations of the director.

(5) Use to his own advantage, or reveal other than to the authorized representatives of this state, United States government or any other state in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this chapter concerning any matter which is entitled to protection as a trade secret. [1969 ex.s. c 146 § 37.]

16.74.390 Reproducing official mark or certificate prohibited. No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director. [1969 ex.s. c 146 § 38.]

16.74.400 Unlawful acts as to official mark, device or certificate. No person shall:

(1) Forge any official device, mark, or certificate;

(2) Without authorization from the director use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director; or

(6) Represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted. [1969 ex.s. c 146 § 39.]

16.74.410 Facilities, inventory, records to be open to inspection and sampling. The following classes of persons shall, for such period of time as the director may by regulations prescribe, not to exceed two years unless otherwise directed by the director for good cause shown, keep such records as are properly necessary for the effective enforcement of this chapter in order to insure against adulterated or misbranded poultry products for the Washington consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the director, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any person who engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry, for intrastate commerce, for use as human food or animal food;

(2) Any person who engages in the business of buying or selling (as poultry products brokers, wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, or importing, any carcasses, or parts or products of carcasses, of any poultry;

(3) Any person who engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, or importing, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter. [1969 ex.s. c 146 § 41.]

16.74.420 Registration of poultry products brokers, renderers, animal food manufacturers, wholesalers and warehousemen. No person shall engage in business or intrastate commerce, as a poultry products broker, renderer or animal food manufacturer, or engage in business in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce, or importing, any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the director, he has registered with the director his name, and the address of each place of business at which, and all trade names under which, he conducts such business. [1969 ex.s. c 146 § 42.]

16.74.430 Poultry products not for use as human food—Restrictions—Identification. Inspection shall not be provided under this chapter at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in this state, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, knowingly transport, or offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in this state, or import, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the director or are naturally inedible by humans. [1969 ex.s. c 146 § 40.]

16.74.440 Poultry products not for use as human food—Transactions, transportation and importation regulations. No person engaged in the business of buying, selling, or transporting in intrastate commerce, or importing, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, or import, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction, transportation or importation is made in accordance with such regulations as the director may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. [1969 ex.s. c 146 § 43.]

16.74.450 Regulations for storage and handling of poultry products—Penalty for violation. (1) The director may by regulations prescribe conditions under which poultry products capable of use as human food, shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting, in or for commerce, or importing, such articles, whenever the director deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is an infraction punishable under RCW 16.74.650.

(2) Before any criminal proceedings are filed against a person for a violation of this chapter, such person shall be given reasonable notice of the alleged violation and an opportunity to present his views orally or in writing in regard to such contemplated action. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violators of this chapter, whenever he believes that the public interest will be adequately served and compliance with the chapter obtained by a suitable written notice. [1969 ex.s. c 146 § 44.]

16.74.460 Designation of time for inspection of slaughter and processing of poultry. Whenever the director shall deem it necessary in order to furnish proper, efficient and economical inspection of two or more establishments and the proper inspection of poultry or poultry products, the director, after a hearing on written notice to the licensee of each such establishment affected, may designate

days and hours for the slaughter of poultry and the preparation or processing of poultry products at such establishments. The director in making such designation of days and hours shall give consideration to the existing practices at the affected establishment fixing the time for slaughter of poultry and the preparation or processing of poultry products thereof. [1969 ex.s. c 146 § 45.]

16.74.470 Disposition of adulterated or misbranded poultry or poultry products away from preparing establishment—Public nuisance. The director, whenever he finds any poultry or poultry products subject to the provisions of this chapter away from the establishment where such poultry or poultry products were prepared or anywhere in intrastate commerce that are adulterated or misbranded, shall render such poultry or poultry products unsalable or shall order the destruction of such poultry or poultry products which are hereby declared to be a public nuisance. [1969 ex.s. c 146 § 46.]

16.74.480 Embargo on adulterated or misbranded poultry or products—When. The director may, when he finds, or has probable cause to believe that any poultry or poultry product subject to the provisions of this chapter which has been or may be introduced into intrastate commerce and such poultry or poultry products are so adulterated or misbranded that their embargo is necessary to protect the public from injury, affix on such poultry or poultry products a notice of their embargo prohibiting their sale or movement in intrastate commerce without a release from the director. The director shall subsequent to embargo, if he finds that such poultry or poultry products are not adulterated or misbranded so as to be in violation of this chapter, remove such embargo forthwith. [1969 ex.s. c 146 § 47.]

16.74.490 Embargo on adulterated or misbranded poultry or products—Petition to superior court—Hearing—Order—Costs. When the director has embargoed any poultry or poultry products, he shall petition the superior court of the county in which the poultry or poultry product is located without delay and within twenty days for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and, after a prompt hearing to any claimant of poultry or poultry products, shall issue an order which directs the removal of such embargo or the destruction or the correction and release of such poultry or poultry products. An order for destruction or correction and release shall contain such provisions for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond, as the court finds indicated in the circumstance. [1969 ex.s. c 146 § 48.]

16.74.500 Embargo on adulterated or misbranded poultry or products—Owner may agree to disposition of products without petition to court. The director need not petition the superior court as provided for in RCW 16.74.490, if the owner or the claimant of such poultry or poultry products agrees in writing to the disposition of such poultry or poultry products as the director may order. [1969 ex.s. c 146 § 49.]

16.74.510 Embargo on adulterated or misbranded poultry or products—Consolidation of petitions. Two or more petitions under RCW 16.74.490, which pend at the same time and which present the same issue and claimant hereunder, may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1969 ex.s. c 146 § 50.]

16.74.520 Embargo on adulterated or misbranded poultry or products—Claimant entitled to representative sample. The claimant in any proceeding by petition under RCW 16.74.490 shall be entitled to receive a representative sample of the article subject to such proceedings, upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1969 ex.s. c 146 § 51.]

16.74.530 Embargo on adulterated or misbranded poultry or products—Damages from administrative action. No state court shall allow the recovery of damages from administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1969 ex.s. c 146 § 52.]

16.74.540 Annual license—Fee—Contents of application. It shall be unlawful for any person to operate a poultry slaughtering or processing establishment without first having obtained an annual license from the department, which shall expire on the 31st day of March following issuance. A separate license shall be required for each such establishment. Application for a license shall be on a form prescribed by the director and accompanied by a twenty-five dollar annual license fee. Such application shall include the full name of the applicant for the license and the location of the poultry slaughtering or processing establishment he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. [1969 ex.s. c 146 § 53.]

16.74.550 Penalty for late renewal. If the application for renewal of any license provided for under this chapter is not filed prior to April 1st in any year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional fee shall

not be charged if the applicant furnishes an affidavit certifying that he has not operated a poultry slaughtering or processing establishment subsequent to the expiration of his license. [1969 ex.s. c 146 § 54.]

16.74.560 Denial, suspension, revocation of license—Grounds. The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter. [1969 ex.s. c 146 § 55.]

16.74.570 Exemptions. (1) The director shall, by regulation and under such conditions as to sanitary standards, practices, and procedures as he may prescribe, exempt from specific provisions of this chapter—

(a) retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up and/or packaging of poultry products on the premises where such sales to consumers are made;

(b) for such period of time as the director determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this chapter, any person engaged in the processing of poultry or poultry products for intrastate commerce and the poultry or poultry products processed by such person: PROVIDED, That no such exemption shall continue in effect on and after February 18, 1970; and

(c) persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the director determines necessary to avoid conflict with such requirements while still effectuating the purposes of this chapter.

(2)(a) The director shall, by regulation and under such conditions, including sanitary standards, practices, and procedures, as he may prescribe, exempt from specific provisions of this chapter—

(i) the slaughtering by any person of poultry of his own raising, and the processing by him and transportation of the poultry products exclusively for use by him and members of his household and his nonpaying guests and employees; and

(ii) the custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: PROVIDED, That the director may promulgate such rules and regulations as are necessary to prevent the commingling of inspected and uninspected poultry and poultry products.

(b) In addition to the specific exemptions provided herein, the director shall, when he determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by regulation, consistent with paragraph (c), for the exemption of the operations of poultry producers not exempted under paragraph (a), which are engaged in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof, from such provisions of this chapter as he deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as he shall prescribe to effectuate the purposes of this chapter.

(c) The provisions of this chapter shall not apply to poultry producers with respect to poultry of their own raising on their own farms if—

(i) such producers slaughter not more than two hundred fifty turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey);

(ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms.

(3) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (1) and (2).

(4) The director may by order suspend or terminate any exemption under this section with respect to any person whenever he finds that such action will aid in effectuating the purposes of this chapter. [1969 ex.s. c 146 § 65.]

16.74.580 Exceptions to exemption provisions—Licensing and inspection by city or county, when. The exemptions set forth in RCW 16.74.570 shall not include an exemption from the licensing provisions set forth in RCW 16.74.540 for persons slaughtering or processing poultry except as to retail dealers conforming to the provisions of RCW 16.74.570(1)(a) and producers conforming to the provisions of RCW 16.74.570(2)(c): PROVIDED, That any city or county may, when its inspection service is equivalent to that required under the provisions of this chapter as determined by the director and the comparable federal agency administering the federal poultry inspection act, license and inspect any retail dealer's place of business subject to the provisions of this chapter when such retail dealer's place of business is situated within the jurisdiction of such city or county and such retail dealer sells at least fifty percent of the poultry and poultry products at each such place of business to the ultimate consumer. [1969 ex.s. c 146 § 66.]

16.74.590 Rules, regulations and hearings subject to administrative procedure act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which

may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW, the Administrative Procedure Act, as now or hereafter amended. [1969 ex.s. c 146 § 56.]

16.74.600 Intergovernmental cooperation. The director may in order to carry out the purpose of this chapter enter into agreements with any federal, state or other governmental unit for joint inspection programs or for the receipt of moneys from such federal, state or other governmental units in carrying out the purpose of this chapter. [1969 ex.s. c 146 § 57.]

16.74.610 Regulations promulgated under federal poultry products inspection act adopted—Exception. The regulations which have been promulgated under the provisions of the federal poultry products inspection act, 21 USC 451 et seq., and in effect on August 9, 1971, and not in conflict with the provisions of this chapter are adopted as regulations applicable under the provisions of this chapter. [1971 ex.s. c 108 § 4; 1969 ex.s. c 146 § 58.]

16.74.615 Uniformity of state and federal acts and regulations as purpose—Procedure. The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal poultry products inspection act, 21 USC 451 et seq., and regulations adopted thereunder. In accord with such purpose any regulation adopted under the federal poultry products inspection act and published in the federal register shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.05 RCW as enacted or hereafter amended. The director shall, however, within thirty days of the publication of the adoption of any such regulation under the federal poultry products inspection act give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended. [1971 ex.s. c 108 § 5.]

16.74.620 Disposition of moneys. All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1969 ex.s. c 146 § 59.]

16.74.630 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on August 11, 1969. [1969 ex.s. c 146 § 60.]

16.74.640 Authority of city or county to license and inspect poultry products distributors' and retailers' facilities. This chapter shall in no manner be construed to deny or limit the authority of a city or county to license and carry on the necessary inspection of poultry or poultry products, distribution facilities and equipment of retail poultry and poultry product distributors selling, offering for sale, holding for sale, or trading, delivering or bartering poultry or poultry products within their jurisdiction and/or prohibit the sale of poultry or poultry products within their jurisdiction when such poultry or poultry products are adulterated or distributed under unsanitary conditions. [1969 ex.s. c 146 § 67.]

16.74.650 Penalty. Any person violating any provisions of this chapter or any rules or regulations adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 146 § 61.]

16.74.900 Portions of chapter conflicting with federal requirements—Construction. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the department, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the department, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the department. [1969 ex.s. c 146 § 68.]

16.74.910 Severability—1969 ex.s. c 146. If any provision of this chapter, or its application to any person or circumstances is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 146 § 63.]

16.74.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 ex.s. c 146 § 62.]

Title 17
WEEDS, RODENTS AND PESTS

Chapters

Control of predatory birds injurious to agriculture: RCW 15.04.110 through 15.04.120.

Crop liens: Chapter 60.11 RCW.

Director of agriculture: Chapter 43.23 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Mosquito control: Chapter 70.22 RCW.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Washington pesticide control act: Chapter 15.58 RCW.

Chapter 17.04
WEED DISTRICTS

Sections

Agricultural and vegetable seeds: Chapter 15.49 RCW.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

17.04.010 Districts authorized—Area and boundaries. The boards of county commissioners of the respective counties may create a weed district or districts within their counties and enlarge any district, or reduce any district or create or combine or consolidate the districts, or divide or create new districts, from time to time, in the manner hereinafter provided, for the purpose of destroying, preventing and exterminating, or to prevent the introduction, propagation, cultivation or increase of, any particular weed, weeds or plants, or all weeds or plants, including Scotch broom, which are now or may hereafter be classed by the agricultural experiment station of Washington State University as noxious weeds, or plants detrimental to or destructive of crops, fruit, trees, shrubs, valuable plants, forage, or other agricultural plants or produce. Any such district shall include not less than one section of land, and the boundaries thereof shall be along an established road, railroad, scab, uncleared or grazing land, or property line, or established lines, or some natural boundary, and shall include only cultivated or farming lands and shall not include any scab, uncleared or grazing land, except such as shall lie wholly within cultivated or farming lands within the districts, or which lie adjacent to such cultivated or farming lands and which are infested, or which may reasonably be expected to become infested, with the particular weed or weeds to be destroyed, prevented and exterminated by such district: PROVIDED, That any quarter section of land, or lesser legal subdivision in single ownership, fifty percent of which is cultivated or farming land, shall be considered cultivated and farming land within the meaning of this chapter. [1961 c 250 § 1; 1937 c 193 § 1; 1929 c 125 § 1; RRS § 2771. Prior: 1921 c 150 § 1. Formerly RCW 17.04.010 and 17.04.020.]

17.04.030 Petition—Time, place and notice of hearing. Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed weed district may file a petition with the board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known land owners within the proposed district, together with the addresses of such land owners. Upon the filing of such petition the board of county commissioners shall fix a time for a hearing thereon, and shall give

at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, one copy of which shall be at the main entrance to the court house, and by mailing a copy of such notice to each of the land owners named in the petition at the address therein named, and if any of the land described in the petition be owned by the state, a copy thereof shall be mailed to the department of natural resources at Olympia. [1988 c 128 § 4; 1929 c 125 § 2; RRS § 2772. Prior: 1921 c 150 § 2. Formerly RCW 17.04.030 and 17.04.040.]

17.04.050 Board to determine petition—Resolution to create district. At the time and place fixed for such hearing the board of county commissioners shall determine whether such weed district shall be created and if such board determines that such district shall be created, it shall fix the boundaries thereof, but shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented and exterminated as set forth in this petition, and shall not enlarge the boundaries of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice to all land owners interested as provided in RCW 17.04.030. If the board shall determine that the weed district petitioned for shall be created it shall pass a resolution to that effect and shall assign a number to such weed district which shall be the lowest number not already taken or adopted by a weed district in such county, and thereafter such district shall be known as "Weed District No. . . . . of . . . . . County," inserting in the first blank the number of the district and in the second the name of the county in which the district is organized. [1929 c 125 § 3; RRS §§ 2773, 2774. Prior: 1921 c 150 §§ 3, 4. Formerly RCW 17.04.050 and 17.04.060.]

17.04.070 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms of office—Vacancies—Rules and regulations. If the board of county commissioners establish such district it shall call a special meeting to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established by such board.

Notice of such meeting shall be given by the county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the county commissioner in whose commissioner district such district is located shall act as chairman and call the meeting to order. The chairman shall appoint two persons to assist him in conducting the election, one of whom shall act as clerk. If such county commissioner be not present the electors of such district then present shall elect a chairman of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chairman of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. . . . . of . . . . . county (giving number of district and name of county)." If the challenged person shall take such oath or make such affirmation, he shall be entitled to vote; otherwise his vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he desires as the first directors of such district and shall fold his ballot and hand the same to the chairman of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chairman shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first Monday of March following his election.

Annually thereafter, there shall be held a meeting of the electors of such district on the last Monday in February, except that the directors may, by giving the same notice as is required for the initial meeting, fix an earlier time for the annual meeting on any nonholiday during the months of December, January or February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting. In conducting directors' elections, the chairman may accept nominations from the floor but voting shall not be limited to those nominated.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the county commissioners of the county in

which such district is located shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chairman and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the board of county commissioners, which bond shall be filed with the county commissioners and shall be conditioned for the faithful discharge of his duties. The cost of such bond shall be paid by the district the same as other expenses of the district. At any annual meeting the method for destroying, preventing and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. The qualified electors of any weed district, at any annual meeting, may make other weeds that are not on the petition subject to control by the weed district by a two-thirds vote of the electors present: PROVIDED, That said weeds have been classified by the agricultural experiment station of Washington State University as noxious and: PROVIDED FURTHER, That the directors of the weed district give public notice in the manner required for initial meetings of the proposed new control of said weeds by the weed district. [1971 ex.s. c 292 § 15; 1961 c 250 § 2; 1929 c 125 § 4; RRS § 2774-1. Formerly RCW 17.04.070 through 17.04.140.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Elections: Chapter 29.85 RCW.

17.04.150 Powers—Weed inspector. The board of directors of such weed district shall have power:

(1) To adopt rules and regulations, plans, methods and means for the purpose of destroying, preventing and exterminating the weed or weeds specified in the petition, and to supervise, carry out and enforce such rules, regulations, plans, methods and means.

(2) To appoint a weed inspector and to require from him a bond in such sum as the directors may determine for the faithful discharge of his duties, and to pay the cost of such bond from the funds of such district; and to direct such weed inspector in the discharge of his duties; and to pay such weed inspector from the funds of such district such per diem or salary for the time employed in the discharge of his duties as the directors shall determine. [1961 c 250 § 3; 1929 c 125 § 9; RRS § 2778-1. Prior: 1921 c 150 § 6.]

17.04.160 Contiguous lands. Any city or town contiguous to or surrounded by a weed district formed under this chapter shall provide for the destruction, prevention and extermination of all weeds specified in the petition which are within the boundaries of such city or town, in the same manner and to the same extent as is provided for in such surrounding or contiguous weed district; and it shall be the duty of those in charge of school grounds, playgrounds, cemeteries, parks, or any lands of a public or quasi public nature when such lands shall be contiguous to, or within any weed district, to see that all weeds specified in the petition for the creation of such district are destroyed, prevented and exterminated in accordance with the rules and requirements of such district. [1929 c 125 § 6; RRS § 2775-1.]

Destruction of weeds, etc., city ordinance: RCW 35.21.310.

17.04.170 Indian reservation lands—United States lands. Any lands owned by any individual wholly or partly within the United States government Indian reservation may be included within a weed district formed under this chapter, and shall be subject to the same rules, regulations and taxes as other lands within the district; and the board of directors of any weed district are authorized to arrange with the officer or agent in charge of any United States lands, within or contiguous to any such district, for the destruction, prevention and extermination of weeds on such government lands. [1929 c 125 § 7; RRS § 2775-2.]

17.04.180 County and state lands. Whenever any lands belonging to the county are included within a weed district, the county legislative authority shall determine the amount of the taxes for which the lands would be liable if they were in private ownership, and the county legislative authority shall appropriate from the current expense fund of the county sufficient money to pay such amounts. Whenever any state lands are within any weed district, the county treasurer shall certify annually and forward to the appropriate state agency for payment a statement showing the amount of the tax to which the lands would be liable if they were in private ownership, separately describing each lot or parcel and, if delinquent, with interest and penalties consistent with RCW 84.56.020. [1991 c 245 § 1; 1984 c 7 § 18; 1971 ex.s. c 119 § 1; 1961 c 250 § 4; 1929 c 125 § 8; RRS § 2777. Prior: 1921 c 150 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

17.04.190 Duties of weed inspector. It shall be the duty of the weed inspector to carry out the directions of the board of directors and to see that the rules and regulations adopted by the board are carried out. He shall personally deliver or mail to each resident landowner within such district and to any lessee or person in charge of any land within such district and residing in such district, a copy of the rules and regulations of such district; and he shall personally deliver a copy thereof to nonresident landowners or shall deposit a copy of the same in the United States post office in an envelope with postage prepaid thereon addressed to the last known address of such person as shown by the records of the county auditor; and in event no such address is available for mailing he shall post a copy of such rules and regulations in a conspicuous place upon such land. A record shall be kept by the weed inspector of such dates of mailing, posting or delivering such rules and regulations. In case of any railroad such rules and regulations shall be delivered to the section foreman, or to any official of the railroad having offices within the state. Such rules and regulations must be delivered, posted or mailed by the weed inspector as herein provided at least ten days before the time

to start any annual operations necessary to comply with such rules and regulations: PROVIDED, That after such district shall have been in operation two years such rules and regulations shall be delivered to resident landowners only once every three years, unless such rules and regulations are changed. [1961 c 250 § 5; 1929 c 125 § 10; RRS § 2778-2.]

17.04.200 Violation of rules and regulations—Notice to destroy weeds—Destruction. (1) If the weed inspector, or the board of directors, shall find that the rules and regulations of the weed district are not being carried out on any one or more parcels of land within such district, the weed inspector shall give forthwith a notice in writing, on a form to be prescribed by the directors, to the owners, tenants, mortgagees, and occupants, or to the accredited resident agent of any nonresident owner of such lands within the district whereon noxious weeds are standing, being or growing and in danger of going to seed, requiring him to cause the same to be cut down, otherwise destroyed or eradicated on such lands in the manner and within the time specified in the notice, such time, however, not to exceed seven days. It shall be the duty of the county auditor and county treasurer to make available to the weed inspector lists of owners, tenants, and mortgagees of lands within such district;

(2) If a resident agent of any nonresident owner of lands where noxious weeds are found standing, being or growing cannot be found, the local weed inspector shall post said notice in the form provided by the directors in three conspicuous places on said land, and in addition to posting said notice the local weed inspector shall, at the same time mail a copy thereof by registered or certified mail with return receipt requested to the owner of such nonresident lands, if his post office address is known or can be ascertained by said inspector from the last tax list in the county treasurer's office, and it shall be the duty of the treasurer to furnish such lists upon request by the weed inspector. Proof of such serving, posting and mailing of notice by the weed inspector shall be made by affidavit forthwith filed in the office of the county auditor and it shall be the duty of the county auditor to accept and file such affidavits;

(3) If the weeds are not cut down, otherwise destroyed or eradicated within the time specified in said notice, the local weed inspector shall personally, or with such help as he may require, cause the same to be cut down or otherwise destroyed in the manner specified in said notice. [1961 c 250 § 6; 1937 c 193 § 2; 1929 c 125 § 11; RRS § 2778-3. Prior: 1921 c 150 § 9, part.]

17.04.210 Statement of expense—Hearing. The weed inspector shall keep an accurate account of expenses incurred by him in carrying out the provisions of this chapter with respect to each parcel of land entered upon, and the prosecuting attorney of the county or the attorney for the weed district shall cause to be served, mailed or posted in the same manner as provided in this chapter for giving notice to destroy noxious weeds, a statement of such expenses, including description of the land, verified by oath of the weed inspector to the owner, lessee, mortgagee, occupant or agent, or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney or attorney for the weed district and naming a time and place when and where such matter will be brought before the board of directors of such district for hearing and determination, said statement or notice to be served, mailed or posted, as the case may be, at least ten days before the time for such hearing. [1961 c 250 § 7; 1929 c 125 § 12; RRS § 2778-4.]

17.04.220 Examination at hearing of expenses—Amount is tax on land—Effect of failure to serve notices. At the time of such hearing as provided in RCW 17.04.210, or at such time to which the same may be continued or adjourned, the board of directors shall proceed to examine expenses incurred by the weed inspector in controlling weeds on the parcel of land in question, and shall hear such testimony of such other persons who may have legal interest in the proceedings, and shall enter an order upon its minutes as to what amount, if any, is properly chargeable against the lands for weed control. Cost of serving, mailing and posting shall be added to any amount so found to be due and shall be considered part of the cost of weed control on the land in question. The amount so charged by the directors shall be a tax on the land on which said work was done after the expiration of ten days from the date of entry of said order, unless an appeal be taken as in this chapter provided, in which event the same shall become a tax at the time the amount to be paid shall be determined by the court; and the county treasurer shall enter the same on the tax rolls against the land for the current year and collect it, together with penalty and interest, as other taxes are collected, and when so collected the same shall be paid into the fund for such weed district: PROVIDED, That a failure to serve, mail or post any of the notices or statements provided for in this chapter, shall not invalidate said tax, but in case of such failure the lien of such tax shall be subordinate and inferior to the interests of any mortgagee to whom notice has not been given in accordance with the provisions of this chapter. [1961 c 250 § 8; 1929 c 125 § 13; RRS § 2778-5. Prior: 1921 c 150 § 5. FORMER PART OF SECTION: 1925 c 125 § 14 now codified in RCW 17.04.230.]

17.04.230 Appellate review—Notice—Cost bond. Any interested party may appeal from the decision and order of the board of directors of such district to the superior court of the county in which such district is located, by serving written notice of appeal on the chairman of the board of directors and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of two hundred dollars, said cost bond to run to such district and in all respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice must be served and filed within ten days from the date of the decision and order of such board of directors, and said bond must be filed within five days after the filing of such notice of appeal. Whenever notice of appeal and the cost bond as herein provided shall have been filed with the clerk of the superior court, the clerk shall notify the board of directors of such district thereof, and such board shall forthwith certify to said court all

notices and records in said matters, together with proof of service, and a true copy of the order and decision pertaining thereto made by such board. If no appeal be perfected within ten days from the decision and order of such board, the same shall be deemed confirmed and the board shall certify the amount of such charges to the county treasurer who shall enter the same on the tax rolls against the land. When an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons served under this chapter: PROVIDED, That appellate review of the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such review, the amount of charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer and said treasurer shall proceed to enter the same on his rolls against the lands affected. [1988 c 202 § 21; 1971 c 81 § 56; 1929 c 125 § 14; RRS § 2778-6. Formerly RCW 17.04.220, part, and 17.04.230.]

*Appeals to supreme court: **Rules of court:** See Rules of Appellate Procedure.*

Severability—1988 c 202: See note following RCW 2.24.050.

Cost bonds, civil procedure: RCW 4.84.210 through 4.84.240.

17.04.240 Assessments—Classification of property—Tax levy. The directors shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall prorate the cost so determined and shall levy assessments to be collected with the general taxes of the county. In the event that any bonded or warrant indebtedness pledging tax revenue of the district shall be outstanding on April 1, 1951, the directors may, for the sole purpose of retiring such indebtedness, continue to levy a tax upon all taxable property in the district until such bonded or warrant indebtedness shall have been retired. [1957 c 13 § 2. Prior: 1951 c 107 § 1; 1929 c 125 § 5, part; RRS § 2774-2.]

Validating—1957 c 13: "The provisions of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 17.04.240, 17.04.250, 17.04.260, 17.08.050, 17.08.060, 17.08.070, 17.08.080, 17.08.090, 17.08.100 or 17.08.110 are hereby ratified, validated and confirmed." [1957 c 13 § 14.]

17.04.245 Assessment—Tax roll—Collection. Such assessments as are made under the provisions of RCW 17.04.240, by the weed district commissioners, shall be spread by the county assessor on the general tax roll in a separate item. Such assessments shall be collected and accounted for with the general taxes, with the terms and penalties thereto attached. [1951 1st ex.s. c 6 § 1.]

17.04.250 District treasurer—Duties—Fund. The county treasurer shall be ex officio treasurer of such district and the county assessor and other county officers shall take notice of the formation of such district and of the tax levy and shall extend the tax on the tax roll against the property liable therefor the same as other taxes are extended, and such tax shall become a general tax against such property, and shall be collected and accounted for as other taxes, with the terms and penalties thereto attached. The moneys collected from such tax shall be paid into a fund to be known as "fund of weed district . . . . . of . . . . . county" (giving the number of district and name of county). All expenses in connection with the operation of such district, including the expenses of initial and annual meetings, shall be paid from such fund, upon vouchers approved by the board of directors of such district. [1957 c 13 § 3. Prior: 1929 c 125 § 5, part; 1921 c 150 § 5; RRS § 2775.]

17.04.260 Limit of indebtedness. No weed district shall contract any obligation in any year in excess of the total of the funds which will be available during the current year from the tax levy made in the preceding year and funds received in the current year from services rendered and from any other lawful source, and funds accumulated from previous years. [1963 c 52 § 1; 1961 c 250 § 9; 1957 c 13 § 4. Prior: 1929 c 125 § 5, part; 1921 c 150 § 8; RRS § 2778.]

17.04.270 Districts organized under prior law—Reorganization. Any weed district heretofore organized under any law of the state of Washington may become a weed district under the provisions of this chapter and entitled to exercise all the powers and subject to the limitations of a weed district organized under this chapter by the election of three directors for such weed district which shall be done in the same manner as is provided in this chapter for the election of the first directors of a district organized under this chapter. [1929 c 125 § 15; RRS § 2778-7.]

17.04.280 Officials of district may enter lands—Penalty for prevention. All weed district directors, all weed inspectors, and all official agents of all weed districts, in the performance of their official duties, have the right to enter and go upon any of the lands within their weed district at any reasonable time for any reason necessary to effectuate the purposes of the weed district. Any person who prevents or threatens to prevent any lawful agent of the weed district, after said agent identifies himself and the purpose for which he is going upon the land, from entering or going upon the land within said weed district at a reasonable time and for a lawful purpose of the weed district, is guilty of a misdemeanor. [1961 c 250 § 10.]

17.04.900 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW

17.04.910 Continuation or dissolution of district—Noxious weed control boards. See RCW 17.10.900.

Chapter 17.06
INTERCOUNTY WEED DISTRICTS

Sections

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

17.06.010 Definitions. As used in this chapter, unless the context indicates otherwise, "principal board of county commissioners", "principal county treasurer", and "principal county auditor" mean respectively those in the county of that part of the proposed intercounty weed district in which the greatest amount of acreage is located. [1959 c 205 § 1.]

17.06.020 Intercounty weed districts authorized. An intercounty weed district, including all or any part of two counties or more, may be created for the purposes set forth in RCW 17.04.010 by the joint action of the boards of county commissioners of the counties in which any portion of the proposed district is located. [1959 c 205 § 2.]

17.06.030 Petition for formation—Notice of hearing. Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed intercounty weed district may file a petition with the principal board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known landowners within the proposed district, together with the addresses of such landowners. Upon the filing of such petition the principal board of county commissioners shall notify the other boards of commissioners, shall arrange a time for a joint hearing on the petition, and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, and at the main entrance to the court house of each county, and by mailing a copy of such notice to each of the landowners named in the petition at the address named therein. If any of the land described in the petition be owned by the state a copy thereof shall be mailed to the department of natural resources at Olympia. [1988 c 128 § 5; 1959 c 205 § 3.]

17.06.040 Hearing—Boundaries—Order of establishment. At the time and place fixed for such hearing, with the chairman of the principal board acting as chairman, the respective boards shall determine by a majority vote of each of the boards of county commissioners of the counties whether such intercounty weed district shall be created, and if they determine that such district shall be created, the respective boards shall fix the boundaries of the portion of the proposed district within their respective counties, but they shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented and exterminated as set forth in the petition, and they shall not enlarge the boundary of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice, as provided in RCW 17.06.030, to all landowners interested. If the respective bodies shall determine that the weed district petitioned for shall be created each such board shall thereupon enter an order establishing and defining the boundary lines of the proposed district within its respective county. A number shall be assigned to such weed district which shall be the lowest number not already taken or adopted by an intercounty weed district in the state, and thereafter such district shall be known as "weed district No. . . . .", inserting in the blank the number of the district.

If any county represented does not by a majority vote of its board of commissioners support the petition for an intercounty district, the petition shall be dismissed. [1959 c 205 § 4.]

17.06.050 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms—Rules. If the respective boards of county commissioners establish such district the chairman of the principal board shall call a special meeting of landowners to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established.

Notice of such meeting shall be given by the principal county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the chairman shall appoint two persons to assist him in conducting the election, one of whom shall act as clerk. If such chairman be not present the electors of such district then present shall elect a chairman of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chairman of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. . . . . (giving number of district)." If the challenged person shall take such oath or make such affirmation, he shall be entitled to vote; otherwise his vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he desires as the first directors of such district and shall fold his ballot and hand the same to the chairman of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chairman shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first day of March following his election.

Annually thereafter, there shall be held a meeting of the electors of such district on the first Monday in February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time when and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the remaining members of the board of directors shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chairman and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the principal board of county commissioners, which bond shall be filed with the same board and shall be conditioned for the faithful discharge of his duties. The cost of such bond shall be paid by the district the same as other expenses of the district.

At any annual meeting the method for destroying, preventing and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. [1971 ex.s. c 292 § 16; 1959 c 205 § 5.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

17.06.060 Directors powers and duties—Taxation—Treasurer—Costs. The board of directors of an intercounty weed district shall have the same powers and duties as the board of directors of a weed district located entirely within one county, and all the provisions of chapter 17.04 RCW are hereby made applicable to intercounty weed districts: PROVIDED, That in the case of evaluation, assessment, collection, apportionment, and any other allied power or duty relating to taxes in connection with the district, the action shall be performed by the officer or board of the county for that area of the district which is located within his respective county, and all materials, information, and other data and all moneys collected shall be submitted to the proper officer of the county of that part of the district in which the greatest amount of acreage is located. Any power which may be or duty which shall be performed in connection therewith shall be performed by the officer or board receiving such as though only a district in a single county were concerned. All moneys collected from such area constituting a part of such district that should be paid to such district shall be delivered to the principal county treasurer who shall be ex officio treasurer of such district. All other materials, information, or data relating to the district shall be submitted to the district board of directors.

Any costs or expenses incurred under this section shall be borne proportionately by each county involved. [1959 c 205 § 6.]

17.06.070 Actions of county officers—Costs. Whenever any action is required or may be performed by any county officer or board for all purposes essential to the maintenance, operation, and administration of the district, such action shall be performed by the respective officer or board of the county of that part of the district in which the greatest amount of acreage of the district is located.

All costs incurred shall be borne proportionately by each county in that ratio which the amount of acreage of the district located in that part of each county forming a part of the district bears to the total amount of acreage located in the whole district. [1959 c 205 § 7.]

17.06.900 Continuation or dissolution of district—Noxious weed control boards. See RCW 17.10.900.

Chapter 17.10
NOXIOUS WEEDS—CONTROL BOARDS

Sections

17.10.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Noxious weed" means any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices.

(2) "State noxious weed list" means a list of noxious weeds adopted by the state noxious weed control board which list is divided into three classes:

(a) Class A shall consist of those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state;

(b) Class B shall consist of those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region;

(c) Class C shall consist of any other noxious weeds.

(3) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(4) "Owner" means the person in actual control of property, or his agent, whether such control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to RCW 17.10.170 or 17.10.210, means the possessor of legal or equitable title or the possessor of an easement: PROVIDED, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of such easement shall be deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of such easement.

(5) As pertains to the duty of an owner, the words "control", "contain", "eradicate", and the term "prevent the spread of noxious weeds" shall mean conforming to the standards of noxious weed control or prevention adopted by rule or regulation by the state noxious weed control board and an activated county noxious weed control board.

(6) "Agent" means any occupant or any other person acting for the owner and working or in charge of the land.

(7) "Agricultural purposes" are those which are intended to provide for the growth and harvest of food and fiber.

(8) "Director" means the director of the department of agriculture or the director's appointed representative.

(9) "Weed district" means a weed district as defined in chapters 17.04 and 17.06 RCW. [1987 c 438 § 1; 1975 1st ex.s. c 13 § 1; 1969 ex.s. c 113 § 1.]

17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status. (1) In each county of the state there is hereby created a noxious weed control board, which shall bear the name of the county within which it is located. The jurisdictional boundaries of each board shall be coextensive with the boundaries of the county within which it is located.

(2) Each noxious weed control board shall be inactive until activated pursuant to the provisions of RCW 17.10.040. [1969 ex.s. c 113 § 2.]

17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Reimbursement for travel expenses. There is hereby created a state noxious weed control board which shall be comprised of nine voting members. Four of the members shall be elected by the members of the various activated county noxious weed control boards, shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and those qualifications shall continue through their term of office. Two such members shall be elected from the west side of the state, the crest of the Cascades being the dividing line, and two from the east side of the state. The director of

agriculture shall be a member of the board. One member shall be elected by the directors of the various active weed districts formed under chapter 17.04 or 17.06 RCW. The Washington state association of counties shall appoint one voting member who shall be a member of a county legislative authority. The director shall appoint three nonvoting members representing scientific disciplines relating to weed control. The director shall also appoint two voting members to represent the public interest, one from the west side and one from the east side of the state. The term of office for all members of the board shall be three years from the date of election or appointment.

The board, by rule, shall establish a position number for each elected position of the board and shall designate which county noxious weed control board members are eligible to vote for each elected position. The elected members shall serve staggered terms. Elections for the elected members of the board shall be held thirty days prior to the expiration date of their respective terms. Nominations and elections shall be by mail and conducted by the board.

The board shall conduct its first meeting within thirty days after all its members have been elected. The board shall elect from its members a chairman and such other officers as may be necessary. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The members of the board shall serve without salary, but shall be reimbursed for travel expenses incurred in the performance of their duties under this chapter in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1987 c 438 § 2; 1975-'76 2nd ex.s. c 34 § 23; 1969 ex.s. c 113 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

17.10.040 Activation of inactive county noxious weed control board. An inactive county noxious weed control board may be activated by any one of the following methods:

(1) Either within sixty days after a petition is filed by one hundred registered voters within the county or, on its own motion, the county legislative authority shall hold a hearing to determine whether there is a need, due to a damaging infestation of noxious weeds, to activate the county noxious weed control board. If such a need is found to exist, then the county legislative authority shall, in the manner provided by RCW 17.10.050, appoint five persons to hold seats on the county's noxious weed control board.

(2) If the county's noxious weed control board is not activated within one year following a hearing by the county legislative authority to determine the need for activation, then upon the filing with the state noxious weed control board of a petition comprised either of the signatures of at least two hundred registered voters within the county, or of the signatures of a majority of an adjacent county's noxious weed control board, the state board shall, within six months of the date of such filing, hold a hearing in the county to determine the need for activation. If a need for activation is found to exist, then the state board shall order the county legislative authority to activate the county's noxious weed control board and to appoint members to such board in the manner provided by RCW 17.10.050.

(3) The director, with notice to the state noxious weed control board, may order a county legislative authority to activate the noxious weed control board immediately if an infestation of a class A noxious weed or class B noxious weed designated for control within the region wherein the county lies as defined in RCW 17.10.080 is confirmed in that county. The county legislative authority may, as an alternative to activating the noxious weed board, combat the class A noxious weed or class B noxious weed with county resources and personnel operating with the authorities and responsibilities imposed by this chapter on a county noxious weed control board. No county may continue without a noxious weed control board for a second consecutive year if the class A noxious weed or class B noxious weed designated for control within the region wherein the county lies has not been eradicated. [1987 c 438 § 3; 1975 1st ex.s. c 13 § 2; 1969 ex.s. c 113 § 4.]

17.10.050 Activated county noxious weed control board—Members—Election—Terms—Meetings—Quorum—Expenses—Officers—Vacancy. (1) Each activated county noxious weed control board shall consist of five voting members who shall be appointed by the county legislative authority. In appointing such voting members, the county legislative authority shall divide the county into five sections, none of which shall overlap and each of which shall be of the same approximate area, and shall appoint a voting member from each section. At least four of the voting members shall be engaged in the primary production of agricultural products. There shall be one nonvoting member on such board who shall be the chief county extension agent or an extension agent appointed by the chief county extension agent. Each voting member of the board shall serve a term of four years, except that the county legislative authority shall, when a board is first activated under this chapter, designate two voting members to serve terms of two years. The board members shall not receive a salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

(2) The voting members of the board shall represent the same sections designated by the county legislative authority in appointing members to the board at its inception and shall serve until their replacements are appointed. New members of the board shall be appointed at least thirty days prior to the expiration of any board member's term of office.

Notice of expiration of a term of office shall be published at least twice in a weekly or daily newspaper of general circulation in said section with last publication occurring at least ten days prior to the nomination. All persons interested in appointment to the board and residing in the section with a pending nomination shall make a written application that includes the signatures of at least ten registered voters residing in the section supporting the nomination to the county noxious weed control board. After nominations close, the county noxious weed control board shall, after a hearing, send the applications to the county legislative authority recommending the names of the most qualified candidates, and shall post the names of those nominees in the county courthouse and in three places in the section. The county legislative authority, within ten days of receiving the list of nominees, shall appoint one of those

nominees to the county noxious weed control board to represent that section during that term of office.

(3) Within thirty days after all the members have been appointed, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairperson and such other officers as may be necessary.

(4) In case of a vacancy occurring in any voting position on a county noxious weed control board, the county legislative authority of the county in which such board is located shall appoint a qualified person to fill the vacancy for the unexpired term. [1987 c 438 § 4; 1980 c 95 § 1; 1977 ex.s. c 26 § 6; 1975 1st ex.s. c 13 § 3; 1974 ex.s. c 143 § 1; 1969 ex.s. c 113 § 5.]

17.10.060 Activated county noxious weed control board—Weed coordinator—Authority—Rules and regulations. (1) Each activated county noxious weed control board may employ a weed coordinator whose duties shall be fixed by the board but which shall include inspecting land to determine the presence of noxious weeds. Within sixty days from initial employment the weed coordinator shall obtain a pest control consultant license, a pesticide operator license, and the necessary endorsements on the licenses as required by law. Each board may purchase, rent or lease such equipment, facilities or products and may hire such additional persons as it deems necessary for the administration of the county's noxious weed control program.

(2) Each activated county noxious weed control board shall have the power to adopt such rules and regulations, subject to notice and hearing as provided in chapters 42.30 and 42.32 RCW as now or hereafter amended, as are necessary for an effective county weed control or eradication program. [1987 c 438 § 5; 1969 ex.s. c 113 § 6.]

17.10.070 State noxious weed control board—Powers—Report. (1) In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it shall have power to:

(a) Employ a state noxious weed control board executive secretary who shall disseminate information relating to noxious weeds to county noxious weed control boards and weed districts and who shall work to coordinate the educational and weed control efforts of the various county and regional noxious weed control boards and weed districts;

(b) Adopt, amend, change, or repeal such rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

(2) The state noxious weed control board shall provide a written report before January 1 of each odd-numbered year to the governor, the legislature, the county noxious weed control boards, and the weed districts showing the funds disbursed by the department to each noxious weed control board or district, specifically how the funds were spent, and recommendations for the continued best use of state funds for noxious weed control. The report shall include recommendations as to the long-term needs regarding weed control. [1987 c 438 § 6; 1975 1st ex.s. c 13 § 4; 1969 ex.s. c 113 § 7.]

17.10.074 Director—Powers. (1) In addition to the powers conferred on the director under other provisions of this chapter, the director shall, with the advice of the state noxious weed control board, have power to:

(a) Require the county legislative authority or the noxious weed control board of any county or any weed district to report to it concerning the presence, absence, or estimated amount of noxious weeds and measures, if any, taken or planned for the control thereof;

(b) Employ such staff as may be necessary in the administration of this chapter;

(c) Adopt, amend, change, or repeal such rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out this chapter;

(d) Do such things as may be necessary and incidental to the administration of its functions pursuant to this chapter including but not limited to surveying for and detecting noxious weed infestations;

(e) Upon receipt of a complaint signed by a majority of the members of an adjacent county noxious weed control board or weed district, require the county legislative authority or noxious weed control board of the county or weed district that is the subject of the complaint to respond to the complaint within forty-five days with a plan for the control of the noxious weeds cited in the complaint;

(f) If the complaint in subsection (e) of this section involves a class A or class B noxious weed, order the county legislative authority, noxious weed control board, or weed district to take immediate action to eradicate or control the noxious weed infestation. If the county or the weed district does not take action to control the noxious weed infestation in accordance with the order, the director may control it or cause it to be controlled. The county or weed district shall be liable for payment of the expense of the control work including necessary costs and expenses for attorneys' fees incurred by the director in securing payment from the county or weed district;

(g) In counties which have not activated their noxious weed control board, enter upon any property as provided for in RCW 17.10.160, issue or cause to be issued notices and citations and take the necessary action to control noxious weeds as provided in RCW 17.10.170, hold hearings on any charge or cost of control action taken as provided for in RCW 17.10.180, issue a notice of civil infraction as provided for in RCW 17.10.230, and 17.10.310 through 17.10.350, and place a lien on any property pursuant to RCW 17.10.280, 17.10.290, and 17.10.300 with the same authorities and responsibilities imposed by these sections on county noxious weed control boards;

(h) Adopt a list of noxious weed seeds and toxic weeds which shall be controlled in designated articles, products, or feed stuffs as provided for in RCW 17.10.235.

(2) The moneys appropriated for noxious weed control to the department shall be used for administration of the state noxious weed control board for determining the economic impact of noxious weeds in the state of Washington, the purchase of materials for controlling, containing, or eradicating noxious weeds, the purchase or collection of

biological control agents for controlling noxious weeds, and the contracting for services to carry out the purposes of this chapter. In a county with an activated noxious weed control board, the director shall make every effort to contract with that board for the needed services.

(3) If the director determines the need to reallocate funds previously designated for county use, the director shall convene a meeting of the state noxious weed control board to seek its advice concerning any reallocation. [1987 c 438 § 7.]

17.10.080 State noxious weed list—Hearing—Adoption—Dissemination. (1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) At the hearing any person may request the inclusion of any plant to the lists to be adopted by the state noxious weed control board. Any hearing held pursuant to this section shall conform to the Administrative Procedure Act, chapter 34.05 RCW: PROVIDED, That adding a weed to or deleting a weed from the list shall constitute a substantial change as provided for in RCW 34.05.340.

The state noxious weed control board shall send a copy of the lists to each activated county noxious weed control board, to each regional noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board. The record of hearing shall include the written findings of the board for the inclusion of each plant on the list. Such findings shall be made available upon request to any interested person. [1989 c 175 § 57; 1987 c 438 § 8; 1975 1st ex.s. c 13 § 5; 1969 ex.s. c 113 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

17.10.090 State noxious weed list—Selection of weeds for control by county board. Each county noxious weed control board shall, within thirty days of the receipt of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies which it finds necessary to be controlled in the county. The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds shall comprise the county noxious weed list. [1987 c 438 § 9; 1969 ex.s. c 113 § 9.]

17.10.100 Order to county board to include weed from state board's list in county's noxious weed list. Where any of the following occur, the state noxious weed control board may, following a hearing, order any county noxious weed control board or weed district to include a noxious weed from the state board's list in the county's noxious weed list:

(1) Where the state noxious weed control board receives a petition from at least one hundred registered voters within the county requesting that the weed be listed.

(2) Where the state noxious weed control board receives a request for such inclusion from an adjacent county's noxious weed control board or weed district, which board or district has included that weed in the county list and which board or weed district alleges that its noxious weed control program is being hampered by the failure to include the weed on the county's noxious weed list. [1987 c 438 § 10; 1969 ex.s. c 113 § 10.]

17.10.110 Regional noxious weed control board—Creation. A regional noxious weed control board comprising the area of two or more counties may be created as follows:

The county legislative authority and/or noxious weed control board of two or more counties may, upon a determination that the purpose of this chapter will be served by the creation of a regional noxious weed control board, adopt a resolution providing for a limited merger of the functions of their respective counties noxious weed control boards. Such resolution shall become effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board. [1987 c 438 § 11; 1975 1st ex.s. c 13 § 6; 1969 ex.s. c 113 § 11.]

17.10.120 Regional noxious weed control board—Members—Meetings—Quorum—Officers—Effect on county boards. In any case where a regional noxious weed control board is created, the county noxious weed control boards comprising the regional board shall still remain in existence and shall retain all powers and duties provided for such boards under this chapter.

The regional noxious weed control board shall be comprised of the voting members and the nonvoting members of the component counties noxious weed control boards or county legislative authorities who shall, respectively, be the voting and nonvoting members of the regional board: PROVIDED, That each county shall have an equal number of voting members. The board may appoint other nonvoting members as deemed necessary. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect a chairperson from its members and such other officers as may be necessary. Members of the regional board shall serve without salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties. [1987 c 438 § 12; 1969 ex.s. c 113 § 12.]

17.10.130 Regional noxious weed control board—Powers and duties. The powers and duties of a regional noxious weed control board are as follows:

(1) The regional board shall, within thirty days of the receipt of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the state list which it finds necessary to be controlled on a regional basis. The weeds thus selected shall also be contained in the county noxious weed list of each county in the region.

(2) The regional board shall take such action as may be necessary to coordinate the noxious weed control programs of the region and shall adopt a regional plan for the control of noxious weeds. [1987 c 438 § 13; 1969 ex.s. c 113 § 13.]

17.10.134 Liability of county and regional noxious weed control boards. Obligations or liabilities incurred by any county or regional noxious weed control board or any claims against a county or regional noxious weed control board shall be governed by chapter 4.96 RCW or RCW 4.08.120: PROVIDED, That individual members or employees of a county noxious weed control board shall be personally immune from civil liability for damages arising from actions performed within the scope of their official duties or employment. [1987 c 438 § 14.]

17.10.140 Owner's duty to control spread of noxious weeds. Except as is provided under RCW 17.10.150, every owner shall perform, or cause to be performed such acts as may be necessary to control and to prevent the spread of noxious weeds from his property. [1969 ex.s. c 113 § 14.]

17.10.150 Owner's duty in controlling noxious weeds on nonagricultural land—Buffer strip defined—Limitation. (1) The county noxious weed control board in each county may classify lands for the purposes of this chapter. In regard to any land which is classified by the county noxious weed control board as not being used for agricultural purposes, the owner thereof shall have the following limited duty to control noxious weeds present on such land:

(a) The owner shall eradicate all class A noxious weeds, and shall control and prevent the spread of class B noxious weeds designated for control within the region in which such land lies. The owner shall also control and prevent the spread of class C noxious weeds on any portion of such land which is within the buffer strip around land used for agricultural purposes. The buffer strip shall be all land which is within one thousand feet of land used for agricultural purposes.

(b) In any case of a serious infestation of a particular noxious weed, which infestation exists within the buffer strip of land described in paragraph (a) of subsection (1) of this section, and which extends beyond said buffer strip of land, the county noxious weed control board may require that the owner of such buffer strip of land take such measures, both within said buffer strip of land as well as on other land owned by said owner contiguous to said buffer strip of land on which such serious infestation has spread, as are necessary to control and prevent the spread of such particular noxious weed.

(c) Forest lands classified pursuant to RCW 17.10.240(3) shall be subject to the weed control requirements established in subsection (1) (a) and (b) of this section at all times whether such lands are used for agricultural purposes or are not used for such purposes. In addition, forest lands shall be subject to RCW 17.10.140 and all other provisions of this chapter for a single five-year period designated by the county noxious weed control board following the harvesting of trees for timber.

(2) In regard to any land which is classified by the county noxious weed control board as scab or range land, the board may limit the duty of the owner thereof to control class C noxious weeds present on such land. The board may share the cost of controlling such weeds, may provide for a buffer strip around the perimeter of such land or may take any other reasonable measures to control or contain noxious weeds on such land at an equitable cost to the owner. The board shall classify as range or scab land all that land within the county for which the board finds that the cost of controlling all of the noxious weeds present would be disproportionately high when compared to the benefits derived from noxious weed control on such land. [1987 c 438 § 15; 1975 1st ex.s. c 13 § 7; 1974 ex.s. c 143 § 2; 1969 ex.s. c 113 § 15.]

17.10.154 Owners' agreements with county noxious weed control boards—Terms—Enforcement. It is recognized that the prevention, control, and eradication of noxious weeds presents a problem for immediate as well as for future action. It is further recognized that immediate prevention, control, and eradication is practicable on some lands and that prevention, control, and eradication on other lands should be extended over a period of time. Therefore, it is the intent of this chapter that county noxious weed control boards may use their discretion and, by agreement with the owners of land, may propose and accept plans for prevention, control, and eradication which may be extended over a period of years. The county noxious weed control board may make an agreement with the owner of any parcel of land by contract between the landowner and the respective county noxious weed control board, and the board shall enforce the terms of any agreement. The county noxious weed control board may make any terms which will best serve the interests of the owners of the parcel of land and the common welfare which comply with this chapter and the rules adopted thereunder. [1987 c 438 § 16.]

17.10.160 Right of entry—Warrant for noxious weed search—Civil liability—Penalty for preventing entry. Any authorized agent or employee of the county noxious weed control board or of the state noxious weed control board or of the department of agriculture where not otherwise proscribed by law may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens of weeds or other materials, general inspection, and the performance of eradication or control work. Prior to carrying out the purposes for which the entry is made, the official making such entry or someone in his or her behalf, shall have first made a reasonable attempt to notify the owner of the property as to the purpose and need for the entry.

(1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution upon which noxious weeds are standing or growing and the owner thereof refuses permission to inspect the property, a judge of the superior court or district court in the county in which such property is located may, upon the request of the county noxious weed control board or its agent, issue a warrant directed to such board or agent authorizing the search for the noxious weeds described in the request for the warrant.

(2) Application for issuance and execution and return of the warrant authorized by this section shall be in accordance

with the applicable rules of the superior court or the district courts.

(3) Nothing in this section requires the application for and issuance of any warrant not otherwise required by law: PROVIDED, That civil liability for negligence shall lie in any case in which entry and any of the activities connected therewith are not undertaken with reasonable care.

(4) Any person who improperly prevents or threatens to prevent entry upon land as authorized in this section or any person who interferes with the carrying out of this chapter shall be upon conviction guilty of a misdemeanor. [1987 c 438 § 17; 1969 ex.s. c 113 § 16.]

17.10.170 Finding presence of noxious weeds—Notice for failure of owner to control—Control by county board—Liability of owner—Lien—Alternative. (1) Whenever the county noxious weed control board finds that noxious weeds are present on any parcel of land, and that the owner thereof is not taking prompt and sufficient action to control the same, pursuant to the provisions of RCW 17.10.140 and 17.10.150, it shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, and shall identify the noxious weeds found to be present, order prompt control action, and specify the time, of at least ten days from issuance of the notice, within which the prescribed action must be taken. Upon deposit of the certified letter of notice, the noxious weed control authority shall make an affidavit of mailing which shall be prima facie evidence that proper notice was given. If seed dispersion is imminent, immediate control action may be taken forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by certified mail or personal service.

(2) The county noxious weed control board or its authorized agents may issue a notice of civil infraction as provided for in RCW 17.10.230 and 17.10.310 through 17.10.350 to owners who do not take action to control noxious weeds in accordance with the notice.

(3) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board may control them, or cause their being controlled, at the expense of the owner. The amount of such expense shall constitute a lien against the property and may be enforced by proceedings on such lien except as provided for by RCW 79.44.060. The owner shall be liable for payment of the expense, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien. Necessary costs and expenses including reasonable attorneys' fees incurred by the county noxious weed control board in carrying out this section may be recovered at the same time as a part of the action filed under this section. Funds received in payment for the expense of controlling noxious weeds shall be transferred to the county noxious weed control board to be expended as required to carry out the purposes of this chapter.

(4) The county auditor shall record in his office any lien created under this chapter, and any such lien shall bear interest at the rate of twelve percent per annum from the date on which the county noxious weed control board approves the amount expended in controlling such weeds.

(5) As an alternative to the enforcement of any lien created under subsection (3) of this section, the county legislative authority may by resolution or ordinance require that each such lien created shall be collected by the treasurer in the same manner as a delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes shall bear interest at the rate of twelve percent per annum and such interest shall accrue as of the date notice of the lien is sent to the owner: PROVIDED, That any collections for such lien shall not be considered as tax. [1987 c 438 § 18; 1979 c 118 § 1; 1975 1st ex.s. c 13 § 8; 1974 ex.s. c 143 § 3; 1969 ex.s. c 113 § 17.]

17.10.180 Hearing on liability for expense of control—Notice—Review. Any owner, upon request pursuant to the rules and regulation of the county noxious weed control board, shall be entitled to a hearing before the board on any charge or cost for which the owner is alleged to be liable pursuant to RCW 17.10.170 or 17.10.210. The board shall send notice by certified mail within thirty days, to each owner at the owner's last known address, as to any such charge or cost and as to his right of a hearing. The hearing shall be scheduled within forty-five days of notification. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court in the county in which the property is located, and such court shall have original jurisdiction to determine any suit brought by the owner to recover damages allegedly suffered on account of control work negligently performed: PROVIDED, That no stay or injunction shall lie to delay any such control work subsequent to notice given pursuant to RCW 17.10.160 or pursuant to an order under RCW 17.10.210. [1987 c 438 § 19; 1969 ex.s. c 113 § 18.]

17.10.190 Notice and information as to noxious weed control. Each activated county noxious weed control board shall cause to be published annually and at such other times as may be appropriate in at least one newspaper of general circulation within its area a general notice. The notice shall direct attention to the need for noxious weed control and shall give such other information with respect thereto as may be appropriate, or shall indicate where such information may be secured. In addition to the general notice required hereby, the county noxious weed control board may use any appropriate media for the dissemination of information to the public as may be calculated to bring the need for noxious weed control to the attention of owners. The board may consult with individual owners concerning their problems of noxious weed control and may provide them with information and advice, including giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, or use of livestock. Publication of a notice as required by this section shall not be a condition precedent to the enforcement of this

chapter. [1987 c 438 § 20; 1975 1st ex.s. c 13 § 9; 1969 ex.s. c 113 § 19.]

17.10.200 Control of noxious weeds on federal and Indian lands. (1) In the case of land owned by the United States on which control measures of a type and extent required pursuant to this chapter have not been taken, the local noxious weed control authority, with the approval of both the director of the department of agriculture and the appropriate federal agency, may perform, or cause to be performed, such work. The cost thereof, if not paid by the agency managing the land, may be paid from any funds available to the department of agriculture or the local noxious weed control authority for the administration of this chapter.

(2) The county noxious weed control board is authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on Indian or federal lands.

(3) The state shall make all possible efforts to obtain reimbursement from the federal government for costs incurred under this section: PROVIDED, That the state shall actively seek to inform the federal government of the need for noxious weed control on federally owned land where the presence of noxious weeds adversely affects local control efforts: PROVIDED FURTHER, That the state shall actively seek adequate federal funding for noxious weed control on Indian or federally owned land. [1987 c 438 § 21; 1979 c 118 § 3; 1969 ex.s. c 113 § 20.]

17.10.205 Control of noxious weeds in open areas. Open areas subject to the spread of noxious weeds, other than crop land, including but not limited to subdivisions, school grounds, playgrounds, parks, and rights of way shall be subject to regulation by activated county noxious weed control boards in the same manner and to the same extent as is provided for agricultural lands. [1975 1st ex.s. c 13 § 16.]

17.10.210 Quarantine of land—Order—Expense. (1) Whenever the director or the county noxious weed control board or a weed district finds that a parcel of land is so seriously infested with class A or class B noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the director or the county noxious weed control board or weed district, with the approval of the director of the department of agriculture, may issue an order for such quarantine and restriction or denial of access or use. Upon issuance of the order, the director or the county noxious weed control board or weed district shall commence necessary control measures and shall prosecute them with due diligence.

(2) An order of quarantine shall be served, by any method sufficient for the service of civil process, on all persons known to qualify as owners of the land within the meaning of this chapter.

(3) The director shall, with the advice of the state noxious weed control board, determine how the expense of control work undertaken pursuant to this section, and the cost of any quarantine in connection therewith, shall be apportioned. [1987 c 438 § 22; 1969 ex.s. c 113 § 21.]

17.10.230 Violations—Penalty. Any owner knowing of the existence of any noxious weeds on the owner's land who fails to control such weeds in accordance with this chapter and rules and regulations in force pursuant thereto; or any person who enters upon any land in violation of an order in force pursuant to RCW 17.10.210; or any person who interferes with the carrying out of the provisions of this chapter has committed a civil infraction. [1987 c 438 § 23; 1979 c 118 § 2; 1969 ex.s. c 113 § 23.]

17.10.235 Selling product, article, or feed containing noxious weed seeds or toxic weeds—Penalty—Rules—Inspections—Fees. (1) Any person who knowingly or negligently sells a product, article, or feed stuff designated under subsection (2) of this section containing noxious weed seeds or toxic weeds designated for control under subsection (2) of this section and in an amount greater than the amount established by the director for the seed or weed under subsection (2) of this section is guilty of a misdemeanor.

(2) The director of agriculture shall adopt, with the advice of the state noxious weed control board, rules designating noxious weed seeds the presence of which shall be controlled in products or articles to prevent the spread of noxious weeds. The rules shall identify the products and articles in which such seeds must be controlled and the maximum amount of such seed to be permitted in the product or article to avoid a hazard of spreading the noxious weed by seed from the product or article. The director shall also adopt, with the advice of the state board, rules designating toxic weeds the presence of which shall be controlled in feed stuffs to prevent injury to the animal that consumes the feed. The rules shall identify the feed stuffs in which the toxic weeds must be controlled and the maximum amount of the toxic weed to be permitted in such feed.

(3) The department of agriculture shall, upon request of the buyer, inspect products, articles, or feed stuffs designated under subsection (2) of this section and charge fees, in accordance with chapter 22.09 RCW, to determine the presence of designated noxious weed seeds or toxic weeds. [1987 c 438 § 30; 1979 c 118 § 4.]

17.10.240 Special assessments, appropriations for noxious weed control—Assessment rates. The activated county noxious weed control board of each county shall annually submit a budget to the county legislative authority for the operating cost of the county's weed program for the ensuing fiscal year: PROVIDED, That if the board finds the budget approved by the legislative authority is insufficient for an effective county noxious weed control program it shall petition the county legislative authority to hold a hearing as provided in *RCW 17.10.890. Control of weeds is a special benefit to the lands within any such section. Funding for the budget shall be derived from either or both of the following:

(1) The county legislative authority may, in lieu of a tax, levy an assessment against the land for this purpose. Prior to the levying of an assessment the county noxious weed control board shall hold a public hearing at which it shall gather information to serve as a basis for classification and shall then classify the lands into suitable classifications, including but not limited to dry lands, range lands, irrigated lands, nonuse lands, forest lands, or federal lands. The

board shall develop and forward to the county legislative authority, as a proposed level of assessment for each class, such an amount as shall seem just. The assessment rate shall be either uniform per acre in its respective class or a flat rate per parcel rate plus a uniform rate per acre: PROVIDED, That if no special benefits should be found to accrue to a class of land, a zero assessment may be levied. The legislative authority, upon receipt of the proposed levels of assessment from the board, after a hearing, shall accept, modify, or refer back to the board for its reconsideration all or any portion of the proposed levels of assessment. The findings by the county legislative authority of such special benefits, when so declared by resolution and spread upon the minutes of said authority shall be conclusive as to whether or not the same constitutes a special benefit to the lands within the section. The amount of such assessment shall constitute a lien against the property. The county legislative authority may by resolution or ordinance require that notice of the lien be sent to each owner of property for which the assessment has not been paid by the date it was due and that each such lien created shall be collected by the treasurer in the same manner as delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes shall bear interest at the rate of twelve percent per annum and such interest shall accrue as of the date notice of the lien is sent to the owner: PROVIDED FURTHER, That any collections for such lien shall not be considered as tax; or

(2) The county legislative authority may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the county legislative authority may make emergency appropriations as it deems necessary for the implementation of this chapter.

(3) Forest lands used solely for the planting, growing, or harvesting of trees and which are typified, except during a single period of five years following clear-cut logging, by canopies so dense as to prohibit growth of an understory may be subject to an annual noxious weed assessment levied by a county legislative authority that shall not exceed one-tenth of the weighted average per acre noxious weed assessment levied on all other lands in unincorporated areas within the county that are subject to the weed assessment. This assessment shall be computed in accordance with the formula in subsection (4) of this section.

(4) The calculation of the "weighted average per acre noxious weed assessment" shall be a ratio expressed as follows: (a) The numerator shall be the total amount of funds estimated to be collected from the per acre assessment on all lands except (i) forest lands as identified in subsection (3) of this section, (ii) lands exempt from the noxious weed assessment, and (iii) lands located in an incorporated area. (b) The denominator shall be the total acreage from which funds in (a) of this subsection are collected. For lands of less than one acre in size, the denominator calculation may be based on the following assumptions: (i) Unimproved lands shall be calculated as being one-half acre in size on the average, and (ii) improved lands shall be calculated as being one-third acre in size on the average. The county legislative authority may choose to calculate the denominator for lands of less than one acre in size using other assumptions about average parcel size based on local information.

(5) For those counties that levy a per parcel assessment to help fund noxious weed control programs, the per parcel assessment on forest lands as defined in subsection (3) of this section shall not exceed one-tenth of the per parcel assessment on nonforest lands. [1987 c 438 § 31; 1975 1st ex.s. c 13 § 10; 1969 ex.s. c 113 § 24.]

***Reviser's note:** The original reference in this section to "section 35 of this act" appears to be erroneous. It has been changed to refer to section 37 of the act, codified as RCW 17.10.890, which relates to hearings.

17.10.250 Applications for noxious weed control funds. The legislative authority of any county with an activated noxious weed control board or the board of any weed district may apply to the director for noxious weed control funds. Any such applicant must employ adequate administrative personnel to supervise an effective weed control program as determined by the director with advice from the state noxious weed control board. The director with advice from the state noxious weed control board shall adopt rules on the distribution and use of noxious weed control account funds. [1987 c 438 § 32; 1975 1st ex.s. c 13 § 11; 1969 ex.s. c 113 § 25.]

17.10.260 Administrative powers to be exercised in conformity with administrative procedure act—Use of weed control substances subject to other acts. The administrative powers granted under this chapter to the director of the department of agriculture and to the state noxious weed control board shall be exercised in conformity with the provisions of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. The use of any substance to control noxious weeds shall be subject to the provisions of the water pollution control act, chapter 90.48 RCW, as now or hereafter amended, the Washington pesticide control act, chapter 15.58 RCW, and the Washington pesticide application act, chapter 17.21 RCW. [1987 c 438 § 33; 1969 ex.s. c 113 § 28.]

17.10.270 Noxious weed control boards—Authority to obtain insurance or surety bonds. Each noxious weed control board may obtain such insurance or surety bonds, or both with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1987 c 438 § 34; 1974 ex.s. c 143 § 5.]

17.10.280 Lien for labor, material, equipment used in controlling noxious weeds. Every activated county noxious weed control board performing labor, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the control of noxious weeds, or in causing control of noxious weeds, upon any property pursuant to the provisions of chapter 17.10 RCW has a lien upon such property for the labor performed, material furnished, or equipment supplied whether performed, furnished, or supplied with the consent of the owner, or his

agent, of such property, or without the consent of said owner or agent. [1987 c 438 § 35; 1975 1st ex.s. c 13 § 13.]

17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien. Every county noxious weed control board furnishing labor, materials, or supplies or renting, leasing, or otherwise supplying equipment to be used in the control of noxious weeds upon any property pursuant to RCW 17.10.160 and 17.10.170 or pursuant to an order under RCW 17.10.210 as now or hereafter amended, shall give to the owner or reputed owner or his agent a notice in writing, within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, which notice shall cover the labor, material, supplies, or equipment furnished or leased, as well as all subsequent labor, materials, supplies, or equipment furnished or leased, stating in substance and effect that such county noxious weed control board is furnishing or has furnished labor, materials and supplies or equipment for use thereon, with the name of the county noxious weed control board ordering the same, and that a lien may be claimed for all materials and supplies or equipment furnished by such county noxious weed control board for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner at his place of residence or reputed residence. [1987 c 438 § 36; 1975 1st ex.s. c 13 § 14.]

17.10.300 Lien for labor, material, equipment used in controlling noxious weeds—Claim—Filing—Contents. No lien created by RCW 17.10.280 shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of cessation of the performance of such labor, furnishing of materials, or the supplying of such equipment, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the county noxious weed control board which performed the labor, furnished the material, or supplied the equipment, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, or his agent, and if the owner is not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the county noxious weed control board, and be verified by the oath of the county noxious weed control board, to the effect that the affiant believes that claim to be just; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interest of third parties shall not be affected by such amendment. A claim or lien substantially in the same form provided by *RCW 60.04.060 and not in conflict with this section shall be sufficient. [1975 1st ex.s. c 13 § 15.]

***Reviser's note:** RCW 60.04.060 was repealed by 1991 c 281 § 31, effective April 1, 1992.

17.10.310 Notice of infraction—Issuance—Refusal to identify self or respond to notice a misdemeanor. The county noxious weed control board may issue a notice of civil infraction if after investigation it has reasonable cause to believe an infraction has been committed. It shall be a misdemeanor for any person to refuse to identify himself or herself properly for the purpose of issuance of a notice of infraction. Any person wilfully violating a written and signed promise to respond to a notice of infraction shall be guilty of a misdemeanor regardless of the disposition of the notice of infraction. [1987 c 438 § 24.]

17.10.320 Notice of infraction—Response—Failure to respond—Assessment of penalty. (1) A person who receives a notice of infraction shall respond to the notice as provided for in this section within fifteen days of the date on the notice.

(2) Any employee or agent of an owner subject to this chapter may accept a notice of infraction on behalf of the owner. The county noxious weed control board shall also furnish a copy of the notice of infraction to the owner by certified mail within five days of issuance.

(3) If the person determined to have committed the infraction does not contest the determination, that person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction shall be submitted with the response. When a response that does not contest the determination is received, an appropriate order shall be entered into the court's record and a record of the response shall be furnished to the county noxious weed control board.

(4) If a person determined to have committed the infraction wishes to contest the determination, that person shall respond by completing the portion of the notice of the infraction requesting a hearing and submitting it either by mail or in person to the court specified in the notice. The court shall notify the person in writing of the time, place, and date of the hearing which shall not be sooner than fifteen days from the date on the notice, except by agreement.

(5) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it either by mail or in person to the court specified in the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(6) If a person issued a notice of infraction fails to respond to the notice of infraction or fails to appear at the hearing requested pursuant to this section, the court shall enter an appropriate order assessing the monetary penalty prescribed in the schedule of penalties submitted to the court by the state noxious weed control board and shall notify the county noxious weed control board of the failure to respond to the notice of infraction or to appear at a requested hearing. [1987 c 438 § 25.]

17.10.330 Determination of infraction—Hearing—Appeal—Review. A hearing held for the purpose of contesting the determination that an infraction has been committed shall be held without jury. The court may consider the notice of infraction and any other written report submitted by the county noxious weed control board. The person named in the notice may subpoena witnesses and has the right to present evidence and examine witnesses present in court. The burden of proof is upon the county noxious weed control board to establish the commission of the infraction by preponderance of evidence.

After consideration of the evidence and argument, the court shall determine whether the infraction was committed. Where it is not established that the infraction was committed, an order dismissing the notice shall be entered in the court's record. If it is established that the infraction was committed, an appropriate order shall be entered in the court's record, a copy of which shall be furnished to the county noxious weed control board. Appeal from the court's determination or order shall be to the superior court and must be within ten days of the determination or order. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the rules of appellate procedure. [1987 c 438 § 26.]

17.10.340 Commission of infraction—Mitigating circumstances—Hearing. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person named in the notice may not subpoena witnesses. The determination that the infraction has been committed may not be contested at a hearing held for the purpose of explaining circumstances. After the court has heard the explanation of the circumstances surrounding the commission of the infraction, an appropriate order shall be entered in the court's record. A copy of the order shall be furnished to the county noxious weed control board. There may be no appeal from the court's determination or order. [1987 c 438 § 27.]

17.10.350 Infraction—Penalty. Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty. No monetary penalty so assessed may exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and shall submit the schedule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid. Failure to pay any monetary penalties imposed under this chapter shall be punishable as a misdemeanor. [1987 c 438 § 28.]

17.10.890 Deactivation of county noxious weed control board—Hearing. The following procedures shall be followed to deactivate a county noxious weed control board:

(1) The county legislative authority shall hold a hearing to determine whether there continues to be a need for an activated county noxious weed control board if:

(a) A petition is filed by one hundred registered voters within the county;

(b) A petition is filed by a county noxious weed control board as provided in RCW 17.10.240; or

(c) The county legislative authority passes a motion to hold such a hearing.

(2) Except as provided in subsection (4) of this section, the hearing shall be held within sixty days of final action taken under subsection (1) of this section.

(3) If, after hearing, the county legislative authority determines that no need exists for a county noxious weed control board, the county legislative authority shall deactivate the board.

(4) The county legislative authority shall not convene a hearing as provided for in subsection (1) of this section more frequently than once a year. [1987 c 438 § 37.]

17.10.900 Weed districts—Continuation—Dissolution. Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this chapter, shall continue to operate under the provisions of the chapter under which it was formed: PROVIDED, That if ten percent of the landowners subject to any such weed district, and the county noxious weed control board upon its own motion, petition the county legislative authority for a dissolution of the weed district, the county legislative authority shall provide for an election to be conducted in the same manner as required for the election of directors under the provisions of chapter 17.04 RCW, to determine by majority vote of those casting votes, if such weed district shall continue to operate under the act it was formed. The land area of any dissolved weed district shall forthwith become subject to the provisions of this chapter. [1987 c 438 § 38; 1975 1st ex.s. c 13 § 12; 1969 ex.s. c 113 § 26.]

17.10.905 Purpose—Construction—1975 1st ex.s. c 13. The purpose of this chapter is to limit economic loss due to the presence and spread of noxious weeds on or near agricultural land.

The intent of the legislature is that this chapter be liberally construed, and that the jurisdiction, powers, and duties granted to the county noxious weed control boards by this chapter are limited only by specific provisions of this chapter or other state and federal law. [1975 1st ex.s. c 13 § 17.]

17.10.910 Severability—1969 ex.s. c 113. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 113 § 27.]

Chapter 17.12
AGRICULTURAL PEST DISTRICTS

Sections

Rodents: Chapter 17.16 RCW.

17.12.010 Pest districts authorized. For the purpose of destroying or exterminating squirrels, prairie dogs, gophers, moles or other rodents, or of rabbits or any predatory animals that destroy or interfere with the crops, fruit trees, shrubs, valuable plants, fodder, seeds or other agricultural plants or products, thing or pest injurious to any agricultural plant or product, or to prevent the introduction, propagation, growth or increase in number of any of the above described animals, or rodents, the board of county commissioners of any county may create a pest district or pest districts within such county and may enlarge any district containing a lesser territory than the whole county, or reduce any district already created, or combine or consolidate districts or divide, or create new districts from time to time in the manner hereinafter set forth. [1919 c 152 § 1; RRS § 2801.]

17.12.020 Petition—Notice—Hearing. Whenever ten or more resident freeholders in any county petition the board of county commissioners, asking that their lands be included, either separately or with other lands designated in the petition in a district to be formed for the purpose of preventing, destroying, or exterminating any of the animals, rodents or other such things described in RCW 17.12.010, or that such lands be included within a district already formed by the enlargement of such district, or a new district or districts be formed out of a district or districts then in existence or out of territory partly in districts already formed and not included in any district, and such petition indicating the boundaries of such proposed district, whether all or any part of such county, and stating the purpose of such district, the board shall fix a time for the hearing of such petition and shall give at least thirty days notice of the time and place of such hearing by posting copies of such notice of the time and place of such hearing in three conspicuous places within the proposed district and posting one copy of such notice at the court house or place of business of the board, and also by mailing to each freeholder within the proposed district a copy of such notice, to his last known residence, if known, and if not known to the clerk of such board, then and in that event the posting shall be deemed sufficient: PROVIDED, HOWEVER, If the board shall deem it impractical to mail notices to each freeholder, within the proposed district, or if the post office address of all the freeholders are not known, then in that event when recited in a resolution adopted by the board, the notice in addition to posting, shall be published once a week for three successive weeks in the county official paper if there is such, and if there be no official paper, then in some paper published in said county, and if there be no paper published in said county, then in some paper of general circulation within the proposed district. The persons in whose name the property is assessed shall be deemed the owners thereof for the purpose of notice as herein required: PROVIDED, HOWEVER, That for lands belonging to the state, the commissioner of public lands shall be notified, and for lands belonging to the county, the county auditor shall be notified, and if such lands are under lease or conditional sale the lessee or purchaser shall also be notified in the manner above provided. Any person interested may appear at the time of such hearing and may under such rules and regulations as the board may prescribe give his or her reasons for or objections to the creation of such a district. [1919 c 152 § 2; RRS § 2802.]

17.12.030 Determination—Boundaries of district. Upon the hearing of such petition the board shall determine whether such a district shall be created and shall fix the boundaries thereof, but shall not enlarge the boundaries of proposed districts or enlarge or change the boundary or boundaries of any district or districts already formed without first giving the notice to all parties interested as provided in RCW 17.12.020. [1919 c 152 § 3; RRS § 2803.]

17.12.040 Designation of district. If the board shall deem the interests of the county or of any particular section thereof will be benefited by the creation of such a district or districts, or the changing thereof, it shall make a record thereof upon the minutes of the board and shall designate such territory in each such district as "Pest District . . . . . for . . . . . County". [1919 c 152 § 4; RRS § 2804.]

17.12.050 Treasurer—Tax levies. The county treasurer shall be ex officio treasurer for each of such districts so formed and the county assessor and other county officers shall take notice of the formation of such district or districts and shall be governed thereby according to the provisions of this chapter. The assessment or the tax levies as hereinafter provided for shall be extended on the tax rolls against the property liable therefor the same as other assessments or taxes are extended, and shall become a part of the general tax against such property and be collected and accounted for the same as other taxes are, with the terms and penalties attached thereto. The moneys so collected shall be held and disbursed as a special fund for such district and shall be paid out only on warrant issued by the county auditor upon voucher approved by the board of county commissioners. [1919 c 152 § 5; RRS § 2805.]

17.12.060 Supervision of the district. The agricultural expert in counties having an agricultural expert, shall under the direction of Washington State University have general supervision of the methods and means of preventing, destroying or exterminating any animals or rodents as herein mentioned within his county, and of how the funds of any pest district shall be expended to best accomplish the purposes for which such funds were raised; in counties having no such agricultural expert each county commissioner shall be within his respective commissioner district, ex officio supervisor, or the board may designate some such person to so act, and shall fix his compensation therefor.

Whenever any member of the board shall act as supervisor he shall be entitled to his actual expenses and his per diem as county commissioner the same as if he were doing other county business. [1977 ex.s. c 169 § 4; 1919 c 152 § 6; RRS § 2806.]

Reviser's note: The law authorizing the employment of agricultural experts was 1913 c 18 as amended by 1919 c 193 but since repealed by 1949 c 181 which authorizes cooperative extension work in agriculture and home economics. See RCW 36.50.010.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

17.12.080 Levies on state and county lands—Levies on state lands to be added to rental or purchase price. Whenever there shall be included within any pest district lands belonging to the state or to the county the board of county commissioners shall determine the amount of the tax or assessment for which such land would be liable if the same were in private ownership for each subdivision of forty acres or fraction thereof. The assessor shall transmit to the county commissioners a statement of the amounts so due from county lands and the county commissioners shall appropriate from the current expense fund of the county sufficient money to pay such amounts. A statement of the amounts due from state lands within each county shall be annually forwarded to the commissioner of public lands who shall examine the same and if he finds the same correct and that the determination was made according to law, he shall certify the same and issue a warrant for the payment of same against any funds in the state treasury appropriated for such purposes.

The commissioner of public lands shall keep a record of the amounts so paid on account of any state lands which are under lease or contract of sale and such amounts shall be added to and become a part of the annual rental or purchase price of the land, and shall be paid annually at the time of payment of rent or payment of interest or purchase price of such land. When such amounts shall be collected by the commissioner of public lands it shall be paid into the general fund in the state treasury. [1973 c 106 § 11; 1919 c 152 § 8; RRS § 2808. Formerly RCW 17.12.080 and 17.12.090.]

17.12.100 Limit of indebtedness. No district shall be permitted to contract obligations in excess of the estimated revenues for the two years next succeeding the incoming [incurring] of such indebtedness and it shall be unlawful for the county commissioners to approve of any bills which will exceed the revenue to any district which shall be estimated to be received by such district during the next two years. [1919 c 152 § 9; RRS § 2809.]

County budget as limitation on incurring liability: RCW 36.40.100.

Chapter 17.16
RODENTS

Sections

Agricultural pest districts: Chapter 17.12 RCW.

17.16.010 "Rodent" defined. The term "rodent" wherever used in RCW 17.16.010 through 17.16.130 shall be held and construed to mean and include ground squirrels, pocket gophers, rabbits, and such other rodents as the Washington State University shall designate as injurious to the agricultural interests of the state. [1921 c 140 § 1; RRS § 2788.]

17.16.020 Washington State University to administer. The administration of RCW 17.16.010 through 17.16.130 shall be under the supervision and control of the state of Washington by and through the extension service of the Washington State University, in cooperation with the board of county commissioners in the various counties of the state and the bureau of biological survey of the United States department of agriculture. [1919 c 140 § 3; RRS § 2790.]

17.16.030 Washington State University to employ inspectors. The Washington State University is hereby empowered and it shall be its duty to employ persons as it may deem necessary to inspect rodent conditions and to supervise the destruction and extermination of injurious rodents in such counties as shall cooperate with said Washington State University in such work. [1921 c 140 § 4; RRS § 2791.]

17.16.040 Powers and duties. The Washington State University shall be authorized and directed to supervise the extermination of rodents by any land owner, occupant, agent in charge, or lessee, to prepare poisons and baits for that purpose, and to enter upon any farm, rights-of-way, grounds, or premises for the purpose of ascertaining rodent conditions or for the purpose of exterminating the same as in RCW 17.16.010 through 17.16.130 provided. [1921 c 140 § 7; RRS § 2794.]

17.16.050 Cooperation with federal agency. The Washington State University is hereby authorized to cooperate with the bureau of biological survey of the United States department of agriculture, and to make such arrangements as it may deem advisable to join with said bureau in the employment of persons to inspect rodent conditions and to supervise the destruction and extermination of injurious rodents. [1921 c 140 § 5; RRS § 2792.]

17.16.060 Duty of persons to destroy rodents. It shall be the duty of every person, firm or corporation owning, possessing or having the care or charge of any land or lands in the state to destroy and exterminate any and all such rodents thereon. [1921 c 140 § 2; RRS § 2789.]

17.16.070 Notice to destroy—University may destroy if owner fails to do so. Whenever the person or persons designated and employed by the Washington State University for that purpose shall, upon inspection and investigation, determine that the owner, occupant, agent in charge, or lessee of any land has failed or neglected to exterminate the rodents on said land, and that such land is infested with such rodents, it shall notify said owner, occupant, agent in charge or lessee to that effect. Said notice shall describe the land involved, contain a finding that said land is infested with rodents, naming the kind, direct what steps shall be taken to exterminate said rodents, and inform the owner, occupant, agent in charge, or lessee that, unless such steps are begun within a period of ten days after service of said notice (exclusive of the day of service), said land will be entered upon and the rodents exterminated and the expense of such extermination will be charged as a tax against said land, and collected as general taxes are collected. A copy of said notice shall be served personally upon the owner, occupant, agent in charge or lessee if the same is found in the county in which such land is situated. If said owner, occupant, agent in charge, or lessee cannot with reasonable diligence be found in the county, a certificate to that effect, together with said notice, shall be mailed to the person appearing on the records of the county treasurer's office as last paying general taxes on said land, and a copy of said notice shall be posted in a conspicuous place on said land. After the expiration of ten days from the date of service, or mailing and posting, as the case may be, of said notice as herein provided, the Washington State University shall enter said land and exterminate the rodents thereon. [1921 c 140 § 8; RRS § 2795.]

Property taxes, collection of: Chapter 84.56 RCW.

17.16.080 Statement of expense—Notice of hearing. An itemized account shall be kept of the expenses of exterminating the rodents on said land and, upon the conclusion of such work, a sworn itemized statement of such expense, together with the description of the land and a return of the service, or mailing and posting, of the notice to the owner, occupant, agent in charge, or lessee shall be filed with the board of county commissioners of the county in which said land is situated. The board shall thereupon fix a time and place when and where such statement of expense will be considered, and shall give notice of same. Said notice shall be signed by the clerk of the board, shall be served in the same manner, by the same agency, and shall be given for the same length of time and to the same parties as the notice provided for in RCW 17.16.070. [1921 c 140 § 9; RRS § 2796.]

17.16.090 Hearing—Expense to be taxed to land—Limitation. The board of county commissioners shall meet at the time and place fixed in said notice, and shall examine said statement of expenses, hear testimony if offered, and shall determine that said statement, or so much thereof as is just and correct, shall be established as a tax against the land involved. Said board shall also make an order that the total amount of such expenses so approved shall be a tax on the land on which said work was done after the expiration of ten days from the date of the entry of said order on the minutes of the board, unless sooner paid or unless an appeal be taken as provided in RCW 17.16.110 in which event the same shall become a tax at the time the amount charged shall be determined by the court: PROVIDED, That in no case shall the total expense for the extermination of rodents for any one year charged against any tract of land exceed a sum which in the aggregate shall amount to more than twenty cents per acre or fraction thereof included in the tract. [1921 c 140 § 10; RRS § 2797.]

17.16.100 Entry on tax rolls—Rotating fund. The county treasurer shall enter the amount of such expense according to the order of the board, on the tax rolls against the land for the current year, and the same shall become a part of the general taxes for that year to be collected at the same time and with the same interest and penalties and when so collected the same shall be credited to the rotating fund herein provided for. [1921 c 140 § 11; RRS § 2798.]

17.16.110 Appellate review. Any person feeling himself aggrieved at the decision and order of the board of county commissioners approving the amount of such expenses and establishing the same as a tax against the land involved may appeal therefrom to the superior court of the county, by serving a written notice of appeal on the board and by filing a copy of same with proof of service attached, together with a good and sufficient cost bond to be approved by the county clerk in the sum of two hundred dollars, said cost bond to run to the county and in all other respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice of appeal must be served and filed within ten days from the date of the decision and order of the board approving the amount of said expense and establishing the same as a tax against the land involved, and said appeal must be brought on for hearing upon a certified copy of the records in the matter without further pleadings, at the next term of court thereafter. Appellate review of the judgment of the superior court in the matter may be sought as in other cases. Upon the final conclusion of any review so taken, the county clerk shall certify to the county treasurer the result of such review. [1988 c 202 § 22; 1971 c 81 § 57; 1921 c 140 § 12; RRS § 2799.]

*Appeals to supreme court: **Rules of court:** See Rules of Appellate Procedure.*

Severability—1988 c 202: See note following RCW 2.24.050.

17.16.130 Poisons to be labeled. All poisons and poisoned baits prepared and distributed under authority of the board of county commissioners shall be placed in containers plainly labeled to show the character and purpose of the contents thereof. [1950 ex.s. c 19 § 1; 1921 c 140 § 13; RRS § 2800.]

"Misbranded" as applicable to pesticides, devices or spray adjuvants: RCW 15.58.130.

Chapter 17.21
WASHINGTON PESTICIDE APPLICATION ACT

Sections

17.21.010 Declaration of police power and purpose. The application and the control of the use of various pesticides is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be affected with the public interest. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1967 c 177 § 1; 1961 c 249 § 1.]

Washington pesticide control act: Chapter 15.58 RCW.

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

(1) "Agricultural commodity" means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Apparatus" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

(5) "Commercial pesticide applicator" means any person who engages in the business of applying pesticides to the land of another.

(6) "Commercial pesticide operator" means any employee of a commercial pesticide applicator who uses or supervises the use of any pesticide and who is required to be licensed under provisions of this chapter.

(7) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(8) "Department" means the Washington state department of agriculture.

(9) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(10) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel, or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but

not including equipment used for the application of pesticides when sold separately from the pesticides.

(11) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by the applicator or the applicator's employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision. Direct supervision of an aerial apparatus means the pilot of the aircraft must be appropriately certified.

(12) "Director" means the director of the department or a duly authorized representative.

(13) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(14) "EPA" means the United States environmental protection agency.

(15) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(16) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(17) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in a living person or other animals.

(18) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(19) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(20) "Immediate service call" means a landscape application to satisfy an emergency customer request for service, or a treatment to control a pest to landscape plants.

(21) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(22) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(23) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices, and contrivances, appurtenant to or situated on, fixed or mobile, including any used for transportation.

(24) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, parks, golf courses, or schools. This definition shall not apply to: (a) Certified private applicators; (b) state and local health departments and mosquito control districts when conducting mosquito control operations; and (c) commercial pesticide applicators making structural applications.

(25) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(26) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(27) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(28) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest, or which the director may declare to be a pest.

(29) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used.

(30) "Pesticide advisory board" means the pesticide advisory board as provided for in this chapter.

(31) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(32) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of (a) any EPA restricted use pesticide; or (b) any restricted use pesticide restricted to use only by certified applicators by the director, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

(33) "Private-commercial applicator" means a certified applicator who uses or supervises the use of (a) any EPA restricted use pesticide or (b) any restricted use pesticide restricted to use only by certified applicators for purposes other than the production of any agricultural commodity on

lands owned or rented by the applicator or the applicator's employer.

(34) "Residential property" includes property less than one acre in size zoned as residential by a city, town, or county, but does not include property zoned as agricultural or agricultural homesites.

(35) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(36) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(37) "Snails or slugs" include all harmful mollusks.

(38) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(39) "Weed" means any plant which grows where not wanted. [1992 c 176 § 1; 1989 c 380 § 33; 1979 c 92 § 1; 1971 ex.s. c 191 § 1; 1967 c 177 § 2; 1961 c 249 § 2.]

17.21.030 Director's authority—Rules. The director shall administer and enforce the provisions of this chapter and rules adopted hereunder.

(1) The director shall adopt rules:

(a) Governing the application and use, or prohibiting the use, or possession for use, of any pesticide;

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas, which areas may be prescribed by the director, in the state;

(c) Providing that any or all restricted use pesticides shall be purchased, possessed or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities of concentrations; however, any person licensed to sell such pesticides may purchase and possess such pesticides without a permit;

(d) Establishing recordkeeping requirements for licensees, permittees, and certified applicators;

(e) Fixing and collecting examination fees;

(f) Establishing testing procedures, licensing classifications, and requirements for licenses and permits as provided by this chapter; and

(g) Fixing and collecting permit fees.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter. [1989 c 380 § 34; 1987 c 45 § 26; 1979 c 92 § 2; 1961 c 249 § 3.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.040 Rules subject to administrative procedure act. All rules adopted under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW as enacted or hereafter amended, concerning the adoption of rules. [1989 c 380 § 35; 1961 c 249 § 4.]

17.21.050 Hearings—Administrative procedure act. All hearings for the imposition of a civil penalty and/or the suspension, denial, or revocation of a license issued under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings. [1989 c 380 § 36; 1989 c 175 § 58; 1985 c 158 § 4; 1961 c 249 § 5.]

Reviser's note: This section was amended by 1989 c 175 § 58 and by 1989 c 380 § 36, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1989 c 175: See note following RCW 34.05.010.

17.21.060 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 249 § 6.]

17.21.065 Classification of licenses. The director may classify licenses to be issued under the provisions of this chapter, such classifications may include but not be limited to pest control operators, ornamental sprayers, agricultural crop sprayers or right of way sprayers; separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each such classification shall be subject to separate testing procedures and requirements: PROVIDED, That no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section, except as provided for in RCW 17.21.110. [1967 c 177 § 17.]

17.21.070 Commercial pesticide applicator license—Requirements. It shall be unlawful for any person to engage in the business of applying pesticides to the land of another without a commercial pesticide applicator license. Application for the license shall be accompanied by a fee of one hundred twenty-five dollars and in addition a fee of ten dollars for each apparatus, exclusive of one, used by the applicant in the application of pesticides: PROVIDED, That the provisions of this section shall not apply to any person employed only to operate any apparatus used for the application of any pesticide, and in which such person has no financial interest or other control over such apparatus other than its day to day mechanical operation for the purpose of applying any pesticide. Commercial pesticide applicator licenses shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 30; 1989 c 380 § 37; 1981 c 297 § 21; 1967 c 177 § 3; 1961 c 249 § 7.]

Severability—1981 c 297: See note following RCW 15.36.110.

Surcharge: RCW 17.21.360.

17.21.080 Commercial pesticide applicator license—Application. Application for a commercial pesticide applicator license provided for in RCW 17.21.070 shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for such license.

(2) If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or any other organized group of persons whether incorporated or not, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(5) The model, make, horsepower, and size of any apparatus used by the applicant to apply pesticides.

(6) License classification or classifications the applicant is applying for.

(7) Any other necessary information prescribed by the director. [1989 c 380 § 38; 1967 c 177 § 4; 1961 c 249 § 8.]

17.21.100 Recordkeeping by licensees and agricultural users. (1) Pesticide applicators licensed under the provisions of this chapter and all persons applying pesticides to more than one acre of agricultural land in a calendar year, including public entities engaged in roadside spraying of pesticides, shall keep records for each application which shall include the following information:

(a) The location of the land where the pesticide was applied.

(b) The year, month, day and time the pesticide was applied.

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide which was applied.

(d) The crop or site to which the pesticide was applied.

(e) The amount of pesticide applied per acre or other appropriate measure.

(f) The concentration of pesticide that was applied.

(g) The number of acres, or other appropriate measure, to which the pesticide was applied.

(h) The licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application.

(i) The direction and estimated velocity of the wind at the time the pesticide was applied: PROVIDED, That this subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures.

(j) Any other reasonable information required by the director.

(2)(a) The records shall be updated on the same day that a pesticide is applied.

(b) A commercial pesticide applicator who applies a pesticide to an agricultural crop or agricultural lands shall provide a copy of the records required under subsection (1) of this section for the application to the owner, or to the lessee if applied on behalf of the lessee, of the lands to which the pesticide is applied. Records provided by a commercial pesticide applicator to the owner or lessee of agricultural lands under this subsection need not be provided on a form adopted by the department.

(3) The records required under this section shall be maintained and preserved by the licensed applicator or such other person or entity applying the pesticides for no less than seven years from the date of the application of the pesticide to which such records refer. If the pesticide was applied by a commercial pesticide applicator to the agricultural crop or agricultural lands of a person who employs one or more employees, as "employee" is defined in RCW 49.70.020, the records shall also be kept by the employer for a period of seven years from the date of the application of the pesticide to which the records refer.

(4)(a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; the department of health; the pesticide incident reporting and tracking review panel; and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee's designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

(b) Copies of records provided to a person or entity under this subsection (4) shall, if so requested, be provided on a form adopted under subsection (7) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(5) If a request for a copy of the record is made under this section from an applicator referred to in subsection (1) of this section and the applicator refuses to provide a copy, the requester may notify the department of the request and the applicator's refusal. Within seven working days, the department shall request that the applicator provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The applicator shall provide copies of the records to the department within twenty-four hours after the department's request.

(6) The department shall include inspection of the records required under this section as part of any on-site inspection conducted under this chapter on agricultural lands. The inspection shall determine whether the records are readily transferable to a form adopted by the department and are readily accessible to employees. However, no person subject to a department inspection may be inspected under this subsection (6) more than once in any calendar year, unless a previous inspection has found recordkeeping

violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (6) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(7) The department of agriculture and the department of labor and industries shall jointly adopt, by rule, forms that satisfy the information requirements of this section. [1992 c 173 § 1; 1989 c 380 § 39; 1987 c 45 § 28; 1971 ex.s. c 191 § 3; 1961 c 249 § 10.]

Effective dates—1992 c 173: "(1) Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1992].

(2) Section 4 of this act shall take effect January 1, 1993." [1992 c 173 § 5.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.110 Commercial pesticide operator license—Requirements. It shall be unlawful for any person to act as an employee of a commercial pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained a commercial pesticide operator license from the director. The commercial pesticide operator license shall be in addition to any other license or permit required by law for the operation or use of any such apparatus. Application for a commercial operator license shall be accompanied by a license fee of thirty dollars. The provisions of this section shall not apply to any individual who is a licensed commercial pesticide applicator. Commercial pesticide operator licenses shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1992 c 170 § 5; 1991 c 109 § 31; 1989 c 380 § 40; 1981 c 297 § 22; 1967 c 177 § 6; 1961 c 249 § 11.]

Severability—1981 c 297: See note following RCW 15.36.110.

Surcharge: RCW 17.21.360.

17.21.122 Private-commercial applicator license—Requirements. It shall be unlawful for any person to act as a private-commercial applicator without having obtained a private-commercial applicator license from the director. Application for a private-commercial applicator license shall be accompanied by a license fee of fifteen dollars before a license may be issued. Private-commercial applicator licenses issued by the director shall be annual licenses expiring on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1992 c 170 § 6; 1991 c 109 § 32; 1989 c 380 § 41; 1979 c 92 § 6.]

Surcharge: RCW 17.21.360.

17.21.126 Private applicators—Certification requirements. It shall be unlawful for any person to act as a private applicator without first complying with the certification requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use shall be relative to hazards according to RCW 17.21.030 as now or hereafter amended. In determining these standards the director shall take into consideration standards of the EPA and is authorized to adopt by rule these standards. Application for private applicator certification shall be accompanied by a license fee of fifteen dollars before a certification may be issued. Individuals with a valid certified applicator license, pest control consultant license, or dealer manager license who qualify in the appropriate license categories are exempt from this fee requirement provided that licensed public operators exempted from that license fee requirement are not exempted from the private applicator fee requirement. Private applicator certification issued by the director shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1992 c 170 § 7; 1991 c 109 § 33; 1989 c 380 § 42; 1979 c 92 § 8.]

17.21.128 Renewal of certificate or license. The director may renew any certification or license issued under authority of this chapter under the classification for which such applicant is licensed or certificated subject to recertification standards as determined by the director or examination regarding new knowledge that may be required to apply pesticides. [1986 c 203 § 9; 1979 c 92 § 9.]

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.129 Demonstration and research applicator license—Requirements. Except as provided in RCW 17.21.203(1), it is unlawful for a person to use or supervise the use of any pesticide which is restricted to use by certified applicators, on small experimental plots for research purposes when no charge is made for the pesticide and its application, without a demonstration and research applicator's license.

A license fee of fifteen dollars shall be paid before a demonstration and research license may be issued. The demonstration and research applicator license shall be an annual license expiring on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1992 c 170 § 8; 1991 c 109 § 34; 1989 c 380 § 43; 1987 c 45 § 30; 1981 c 297 § 26.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1981 c 297: See note following RCW 15.36.110.

Surcharge: RCW 17.21.360.

17.21.130 Revocation, suspension, or denial. Any license, permit, or certification provided for in this chapter may be revoked or suspended, and any license, permit, or certification application may be denied by the director for cause. [1989 c 380 § 46; 1986 c 203 § 10; 1961 c 249 § 13.]

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.132 License, certification—Applications. Any person applying for a license or certification authorized under the provisions of this chapter shall file an application on a form prescribed by the director. The application shall state the license or certification and the classification(s) the applicant is applying for and the method in which the pesticides are to be applied. Application for a license to apply pesticides shall be accompanied by the required fee. Renewal applications shall be filed on or before the applicable expiration date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. [1991 c 109 § 35; 1989 c 380 § 44.]

17.21.134 Licenses—Examination requirements. (1) The director shall not issue a commercial pesticide applicator license until the applicant, if he or she is the sole owner of the business, or if there is more than one owner, the person managing the business, has passed an examination. The director shall not issue a commercial pesticide operator, public operator, private commercial applicator, or demonstration and research applicator license until the applicant has passed an examination. Such examinations shall require the applicant to demonstrate to the director knowledge of:

(a) How to apply pesticides under the classification he or she has applied for, manually or with the various apparatuses that he or she may operate;

(b) The nature and effect of pesticides he or she may apply under such classifications; and

(c) Any other matter the director determines to be a necessary subject for examination.

(2) The director shall charge an examination fee established by the director by rule when an examination is necessary before a license may be issued or when application for such license and examination is made at other than a regularly scheduled examination date as provided for by the director.

(3) The director may prescribe separate testing procedures and requirements for each license. [1989 c 380 § 45.]

17.21.140 Renewal—Delinquency. (1) If the application for renewal of any license provided for in this chapter is not filed on or prior to the expiration date of the license as set by rule by the director, a penalty of twenty-five dollars for the commercial pesticide applicator's license, and a penalty equivalent to the license fee for any other license, shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such penalty shall not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(2) Any license for which a timely renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [1991 c 109 § 36; 1989 c 380 § 47; 1961 c 249 § 14.]

17.21.150 Violation of chapter—Unlawful acts. A person who has committed any of the following acts is declared to be in violation of this chapter:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Applied worthless or improper materials;

(3) Operated a faulty or unsafe apparatus;

(4) Operated in a faulty, careless, or negligent manner;

(5) Refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the director;

(6) Refused or neglected to keep and maintain the records required by rule, or to make reports when and as required;

(7) Made false or fraudulent records, invoices, or reports;

(8) Engaged in the business of applying a pesticide without having an appropriately licensed person in direct "on-the-job" supervision;

(9) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus;

(10) Used fraud or misrepresentation in making an application for a license or renewal of a license;

(11) Is not qualified to perform the type of pest control under the conditions and in the locality in which he or she operates or has operated, regardless of whether or not he or she has previously passed a pesticide license examination;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(13) Knowingly made false, misleading or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or investigation;

(14) Impersonated any state, county or city inspector or official; or

(15) Used or supervised the use of a pesticide restricted to use by certified applicators without having a certified applicator in direct supervision. [1989 c 380 § 48; 1971 ex.s. c 191 § 4; 1967 c 177 § 8; 1961 c 249 § 15.]

17.21.160 Commercial pesticide applicator license—Financial responsibility. The director shall not issue a commercial pesticide applicator license until the applicant has furnished evidence of financial responsibility with the director consisting either of a surety bond; or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant: PROVIDED, That such surety bond or liability insurance policy need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant. The director shall not accept a surety bond or liability insurance policy except from authorized insurers in this state or if placed as a surplus line as provided for in chapter 48.15 RCW, as enacted or hereafter amended. [1989 c 380 § 49; 1967 c 177 § 9; 1961 c 249 § 16.]

17.21.170 Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer. The amount of the surety bond or liability insurance as provided for in RCW 17.21.160 shall be not less than fifty thousand dollars for property damage and public liability insurance, each separately, and including loss or damage arising out of the actual use of any pesticide. The surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period. The director shall be notified ten days before any reduction at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims is limited to the face of the bond or liability insurance policy. The director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding five thousand dollars for all applicators for the total amount of liability insurance or surety bond required by this section, but if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause shall not be accepted by the director unless the applicant furnishes the director with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides. [1983 c 95 § 7; 1967 c 177 § 10; 1963 c 107 § 1; 1961 c 249 § 17.]

17.21.180 Commercial pesticide applicator license—Suspension of license when financial responsibility lapses. The commercial pesticide applicator license shall, whenever the licensee's surety bond or insurance policy is reduced below the requirements of RCW 17.21.170, be automatically suspended until such licensee's surety bond or insurance policy again meets the requirements of RCW 17.21.170: PROVIDED, That the director may pick up such licensee's license plates during such period of automatic suspension and return them only at such time as the said licensee has furnished the director with written proof that he or she is in compliance with the provisions of RCW 17.21.170. [1989 c 380 § 50; 1987 c 45 § 31; 1967 c 177 § 11; 1961 c 249 § 18.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.190 Damages due to use or application of pesticide—Report of loss required. Any person suffering property loss or damage resulting from the use or application by others of any pesticide shall file with the director a verified report of loss setting forth, so far as known to the claimant, the following:

(1) The name and address of the claimant.

(2) The type, kind, property alleged to be injured or damaged.

(3) The name of the person applying the pesticide and allegedly responsible.

(4) The name of the owner or occupant of the property for whom such application of the pesticide was made.

The report shall be filed within thirty days from the time that the property loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report shall be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the damage.

Any person filing a report of loss under this section shall cooperate with the department in conducting an investigation of such a report and shall provide the department or authorized representatives of the department access to any affected property and any other necessary information relevant to the report. If a claimant refuses to cooperate with the department, the report shall not be acted on by the department.

The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one suffering loss from such use or application of a pesticide by a pesticide applicator or operator, the director may refuse to act upon the complaint. [1991 c 263 § 1; 1989 c 380 § 51; 1961 c 249 § 19.]

17.21.200 Commercial pesticide applicator license—Exemptions. The provisions of this chapter relating to commercial pesticide applicator licenses and requirements for their issuance shall not apply to any forest landowner, or his or her employees, applying pesticides with ground apparatus or manually, on his or her own lands or any lands or rights of way under his or her control or to any farmer owner of ground apparatus applying pesticides for himself or herself or if applied on an occasional basis not amounting to a principal or regular occupation without compensation other than trading of personal services between producers of agricultural commodities on the land of another person or to any grounds maintenance person conducting grounds maintenance on an occasional basis not amounting to a regular occupation. However, persons exempt under this section shall not use pesticides restricted to use by certified applicators and shall not advertise or publicly hold themselves out as pesticide applicators. [1992 c 170 § 9; 1989 c 380 § 52; 1979 c 92 § 3; 1971 ex.s. c 191 § 5; 1967 c 177 § 12; 1961 c 249 § 20.]

17.21.203 Government research personnel, persons engaged in research projects, exemption from licensing—Exceptions. (1) The licensing provisions of this chapter shall not apply to research personnel of federal, state, county, or municipal agencies when performing pesticide research in their official capacities: PROVIDED, That when such persons are applying pesticides restricted to use by certified applicators, they shall be licensed as public operators.

(2) The licensing provisions of this chapter shall not apply to any other person when applying pesticides to small experimental plots for research purposes when no charge is made for the pesticide and its application: PROVIDED, That if such persons are not provided for in subsection (1) of this section and are applying pesticides restricted to use

by certified applicators, they shall be required to be licensed as demonstration and research applicators in accordance with RCW 17.21.129, but shall be exempt from the requirements of RCW 17.21.160, 17.21.170, and 17.21.180. [1981 c 297 § 23; 1979 c 92 § 4; 1971 ex.s. c 191 § 9.]

Severability—1981 c 297: See note following RCW 15.36.110.

17.21.220 Application of chapter to governmental entities—Exemption—Liability. (1) All state agencies, municipal corporations, and public utilities or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application of pesticides.

(2) It shall be unlawful for any employee of a state agency, municipal corporation, public utility, or any other government agency to use or to supervise the use of any pesticide restricted to use by certified applicators, or any pesticide by means of an apparatus, without having obtained a public operator license from the director. A license fee of fifteen dollars shall be paid before a public operator license may be issued. The license fee shall not apply to public operators licensed and working in the health vector field. Public operator licenses shall expire annually on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. The public operator license shall be valid only when the operator is acting as an employee of a government agency.

(3) The jurisdictional health officer or his or her duly authorized representative is exempt from this licensing provision when applying pesticides not restricted to use by certified applicators to control pests other than weeds.

(4) Such agencies, municipal corporations and public utilities shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred. [1991 c 109 § 37; 1989 c 380 § 53; 1986 c 203 § 11; 1981 c 297 § 24; 1971 ex.s. c 191 § 7; 1967 c 177 § 13; 1961 c 249 § 22.]

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1981 c 297: See note following RCW 15.36.110.

Surcharge: RCW 17.21.360.

17.21.230 Pesticide advisory board—Generally. There is hereby created a pesticide advisory board consisting of three licensed pesticide applicators residing in the state (one shall be licensed to operate ground apparatus, one shall be licensed to operate aerial apparatus, and one shall be licensed for structural pest control), one licensed pest control consultant, one licensed pesticide dealer manager, one entomologist in public service, one toxicologist in public service, one pesticide coordinator from Washington State University, one member from the agricultural chemical industry, one member from the food processing industry, one member representing agricultural labor, one health care practitioner in private practice, one member from the environmental community, and two producers of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides. Such members shall be appointed by the governor for terms of four years and may be appointed for successive four year terms at the discretion of the governor. The governor may remove any member of the pesticide advisory board prior to the expiration of his or her term of appointment for cause. The pesticide advisory board shall also include the following nonvoting members: The director of the department of labor and industries or a duly authorized representative, the environmental health specialist from the division of health of the department of social and health services, the supervisor of the chemical division of the department, and the directors, or their appointed representatives, of the departments of wildlife, fisheries, natural resources, and ecology. [1989 c 380 § 54; 1988 c 36 § 8; 1974 ex.s. c 20 § 1; 1971 ex.s. c 191 § 8; 1967 c 177 § 14; 1961 c 249 § 23.]

17.21.240 Pesticide advisory board—Vacancies. Upon the death, resignation or removal for cause of any member of the pesticide advisory board, the governor shall fill such vacancy, within thirty days of its creation, for the remainder of its term in the manner herein prescribed for appointment to the board. [1989 c 380 § 55; 1961 c 249 § 24.]

17.21.250 Pesticide advisory board—Duties. The pesticide advisory board shall advise the director on any or all problems relating to the use and application of pesticides in the state. [1989 c 380 § 56; 1961 c 249 § 25.]

17.21.260 Pesticide advisory board—Officers, meetings. The pesticide advisory board shall elect one of its members chairman. The members of the board shall meet at such time and at such place as shall be specified by the call of the director, chairman or a majority of the board. [1989 c 380 § 57; 1961 c 249 § 26.]

17.21.270 Pesticide advisory board—Travel expenses. No person appointed to the pesticide advisory board shall receive a salary or other compensation as a member of the board: PROVIDED, That each member of the board shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day spent in actual attendance at or traveling to and from meetings of the board or special assignments for the board. [1989 c 380 § 58; 1975-'76 2nd ex.s. c 34 § 24; 1961 c 249 § 27.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

17.21.280 Disposition of revenue, enforcement of chapter—District court fees, fines, penalties and forfeitures. All moneys collected under the provisions of this chapter shall be paid to the director for use exclusively in the enforcement of this chapter: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1989 c 380 § 59; 1987 c 202 § 183; 1969 ex.s. c 199 § 15; 1961 c 249 § 28.]

Intent—1987 c 202: See note following RCW 2.04.190.

17.21.290 Pesticide application apparatuses—Identification. All licensed apparatuses shall be identified by a license plate furnished by the director, at no cost to the licensee, which plate shall be affixed in a location and manner upon such apparatus as prescribed by the director. [1989 c 380 § 60; 1967 c 177 § 15; 1961 c 249 § 29.]

17.21.300 Agreements with other governmental entities. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1961 c 249 § 30.]

17.21.305 Licensing by cities of first class and counties. The provisions of this chapter requiring all structural pest control operators, exterminators and fumigators to license with the department shall not preclude a city of the first class with a population of one hundred thousand people or more, or the county in which it is situated, from also licensing structural pest control operators, exterminators and fumigators operating within the territorial confines of said city or county: PROVIDED, That when structural pest control operators, exterminators and fumigators are licensed by both the city of the first class and the county in which the city is situated, and there exists a joint county-city health department, then the joint county-city health department may enforce the provisions of the city and county as to the license requirements for the structural pest control operators, exterminators and fumigators. [1986 c 203 § 12; 1967 c 177 § 19.]

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.310 General penalty. Any person who shall violate any provisions or requirements of this chapter or rules adopted hereunder shall be deemed guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent offense: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1967 c 177 § 16; 1961 c 249 § 34.]

17.21.315 Civil penalty for failure to comply with chapter. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than seven thousand five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1989 c 380 § 61; 1985 c 158 § 3.]

17.21.320 Access to public or private premises—Search warrants—Prosecuting attorney's duties—Injunctions. (1) For purpose of carrying out the provisions of this chapter the director may enter upon any public or private premises at reasonable times, in order:

(a) To have access for the purpose of inspecting any equipment subject to this chapter and such premises on which such equipment is kept or stored;

(b) To inspect lands actually or reported to be exposed to pesticides;

(c) To inspect storage or disposal areas;

(d) To inspect or investigate complaints of injury to humans or land; or

(e) To sample pesticides being applied or to be applied.

(2) Should the director be denied access to any land where such access was sought for the purposes set forth in this chapter, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application, issue the search warrant for the purposes requested.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(4) The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in the superior court of the county in which such violation occurs or is about to occur. [1989 c 380 § 62; 1971 ex.s. c 191 § 10.]

17.21.340 Violation of chapter—Remedies. (1) A person aggrieved by a violation of this chapter or the rules adopted under this chapter:

(a) May request an inspection of the area in which the violation is believed to have occurred. If there are reasonable grounds to believe that a violation has occurred, the department shall conduct an inspection as soon as practicable. However, the director may refuse to act on a request for inspection concerning only property loss or damage if the person suffering property damage fails to file a timely report of loss under RCW 17.21.190. If an inspection is conducted, the person requesting the inspection shall:

(i) Be promptly notified in writing of the department's decision concerning the assessment of any penalty pursuant to the inspection; and

(ii) Be entitled, on request, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available pursuant to this chapter: PROVIDED, That in any appeal proceeding the identity of the aggrieved person who requests the inspection shall be disclosed to the alleged violator of the act upon request of the alleged violator;

(b) Shall be notified promptly, on written application to the director, of any penalty or other action taken by the department pursuant to an investigation of the violation under this chapter; and

(c) May request, within ten days from the service of a final order fixing a penalty for the violation, that the director reconsider the entire matter if it is alleged that the penalty is inappropriate. If the person is aggrieved by a decision of the director on reconsideration, the person may request an adjudicative proceeding under chapter 34.05 RCW. However, the procedures for a brief adjudicative proceeding may

not be used unless agreed to by the person requesting the adjudicative proceeding. During the adjudicative proceeding under (c) of this subsection, the presiding officer shall consider the interests of the person requesting the adjudicative proceeding.

(2) Nothing in this chapter shall preclude any person aggrieved by a violation of this chapter from bringing suit in a court of competent jurisdiction for damages arising from the violation. [1989 c 380 § 63.]

17.21.350 Report to legislature. By December 1, 1989, and each subsequent December 1, the department shall report to the appropriate committees of the house of representatives and the senate on the activities of the department under this chapter. The report shall include, at a minimum: (1) A review of the department's pesticide incident investigation and enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed; and (2) a summary of the pesticide residue food monitoring program with information on the food samples tested and results of the tests, a listing of the pesticides for which no testing is done, and other pertinent information. [1989 c 380 § 64.]

17.21.360 Registration and license fee surcharge—Agricultural local fund—Incidents and investigations. Each registration and licensing fee under this chapter is increased by a surcharge of five dollars to be deposited in the *agriculture—local fund, provided that an additional one-time surcharge of five dollars shall be collected on January 1, 1990. The revenue raised by the imposition of this surcharge shall be used to assist in funding the pesticide incident reporting and tracking review panel, department of social and health services' pesticide investigations, and the department of agriculture's pesticide investigations. [1989 c 380 § 66.]

***Reviser's note:** The fund referenced here should have been cited as the agricultural local fund. See RCW 43.23.230.

Pesticide incident reporting and tracking review panel: RCW 70.104.080.

17.21.400 Landscape or right of way applications—Notice. (1)(a) A certified applicator making a landscape application shall display the name and telephone number of the applicator or the applicator's employer on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(b) A certified applicator making a right of way application shall display the name and telephone number of the applicator or the applicator's employer and the words "VEGETATION MANAGEMENT APPLICATION" on any power application apparatus. The applicator shall also carry the material safety data sheet for each pesticide being applied.

(2) If a certified applicator receives a written request for information on a spray application, the applicator shall provide the requestor with the name or names of each pesticide applied and (a) a copy of the material safety data sheet for each pesticide; or (b) a pesticide fact sheet for each pesticide as developed or approved by the department.

(3) The director shall adopt rules establishing the size and lettering requirements of the apparatus display signs required under this section. [1992 c 176 § 2.]

17.21.410 Landscape applications—Marking of property. (1) A certified applicator making a landscape application to:

(a) Residential property shall at the time of the application place a marker at the usual point of entry to the property. If the application is made to an isolated spot that is not a substantial portion of the property, the applicator shall only be required to place a marker at the application site. If the application is in a fenced or otherwise isolated backyard, no marker is required.

(b) A golf course shall at the time of the application place a marker at the first tee and tenth tee or post the information in a conspicuous location such as on a central message board.

(c) A school shall at the time of the application place a marker at each primary point of entry to the school grounds.

(d) A park shall at the time of the application place a marker at each primary point of entry.

(2) The marker shall be a minimum of four inches by five inches. It shall have the words: "THIS LANDSCAPE HAS BEEN TREATED BY" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. The company name and service mark with the applicator's telephone number where information can be obtained shall be included between the headline and the footer on the marker. The letters and service marks shall be printed in colors contrasting to the background.

(3) The property owner or tenant shall remove the marker the day following the application. A commercial applicator is not liable for the removal of markers by unauthorized persons or removal outside the designated removal time.

(4) A certified applicator who complies with this section cannot be held liable for personal property damage or bodily injury resulting from markers that are placed as required. [1992 c 176 § 5.]

17.21.420 Pesticide-sensitive individuals—List procedure. (1) The department shall develop a list of pesticide-sensitive individuals. The list shall include any person with a documented pesticide sensitivity who submits information to the department on an application form developed by the department indicating the person's pesticide sensitivity.

(2) An applicant for inclusion on the pesticide-sensitive list may apply to the department at any time and shall provide the department, on the department's form, the name, street address, and telephone number of the applicant and of each property owner with property abutting the applicant's principal place of residence. The pesticide sensitivity of an individual shall be certified by a physician who holds a valid license to practice medicine in this state. The lands listed on an application for inclusion on the pesticide-sensitive list shall constitute the pesticide notification area for that applicant.

(3) A person whose name has been included on the pesticide-sensitive list shall notify the department of a need

to update the list as soon as possible after: (a) A change of address or telephone number; (b) a change in ownership of property abutting a pesticide-sensitive individual; (c) a change in the applicant's condition; or (d) the sensitivity is deemed to no longer exist.

(4) The pesticide-sensitive list shall expire on December 31 of each year. The department shall distribute application forms for the new list at a reasonable time prior to the expiration of the current list, including mailing an application form to each person on the current list at the address given by the person in his or her most recent application. Persons desiring to be placed on or remain on the list shall submit a new application each year.

(5) The department shall distribute the list by February 15 and June 15 of each year to all certified applicators likely to make landscape applications. The list shall provide multiple methods of accessing the information so that certified applicators making landscape applications or right of way applications are able to easily determine what properties and individuals require notification for a specific application. An updated list shall be distributed whenever deemed necessary by the department. Certified applicators may request a list of newly registered individuals that have been added to the list since the last distribution. Registered individuals shall receive verification that their name has been placed on the list. [1992 c 176 § 3.]

17.21.430 Pesticide-sensitive individuals—Notification. (1) A certified applicator making a landscape application or a right of way application to the pesticide notification area, as defined in RCW 17.21.420(2), of a person on the pesticide-sensitive list shall notify the listed pesticide-sensitive individual of the application. Notification shall be made at least two hours prior to the scheduled application, or in the case of an immediate service call, the applicator shall provide notification at the time of the application.

(2) Notification under this section shall be made in writing, in person, or by telephone, and shall disclose the date and approximate time of the application. In the event a certified applicator is unable to provide prior notification because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence of the individual listed on the pesticide-sensitive list at the time of the application. If a person on the pesticide-sensitive list lives in a multifamily dwelling such as an apartment or condominium, the applicator shall notify the person on the list or shall advise the manager or other property owner's representative to notify the person on the list of the application. [1992 c 176 § 4.]

17.21.900 Preexisting liabilities not affected. The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this act becomes effective. [1961 c 249 § 31.]

17.21.910 Prior licenses, continuation, expiration. Unless revoked for cause by the director, any license issued under the provisions of this chapter and in effect on June 7, 1961, shall continue in full force and effect until its expiration date: PROVIDED, That public operator, private commercial applicator and demonstration and research applicator licenses in effect on December 31, 1985, shall expire on December 31, 1990, and any public operator, private commercial applicator and demonstration and research applicator licenses issued after December 31, 1985, and in effect on December 31, 1986, shall expire on December 31, 1991. Unless revoked for cause, any private commercial applicator and demonstration and research licenses issued prior to June 11, 1992, shall be valid until their expiration date. [1992 c 170 § 10; 1989 c 380 § 65; 1961 c 249 § 32.]

17.21.920 Short title. This chapter may be cited as the Washington pesticide application act. [1961 c 249 § 33.]

17.21.930 Severability—1961 c 249. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 249 § 35.]

17.21.931 Severability—1967 c 177. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1967 c 177 § 20.]

17.21.932 Severability—1979 c 92. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 92 § 10.]

17.21.933 Severability—1989 c 380. See RCW 15.58.942.

Chapter 17.24
INSECT PESTS AND PLANT DISEASES

Sections

Horticultural pests and diseases: Chapter 15.08 RCW.

17.24.003 Purpose. The purpose of this chapter is to provide a strong system for the exclusion of plant and bee pests and diseases through regulation of movement and quarantines of infested areas to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state; plants and shrubs within the state; and the environment of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and the public and private costs that result when these infestations become established. [1991 c 257 § 3.]

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

(1) "Department" means the state department of agriculture.

(2) "Director" means the director of the state department of agriculture or the director's designee.

(3) "Quarantine" means a rule issued by the department that prohibits or regulates the movement of articles, bees, plants, or plant products from designated quarantine areas within or outside the state to prevent the spread of disease, plant pathogens, or pests to nonquarantine areas.

(4) "Plant pest" means a living stage of an insect, mite, nematode, slug, snail, or protozoa, or other invertebrate animal, bacteria, fungus, or parasitic plant, or their reproductive parts, or viruses, or an organism similar to or allied with any of the foregoing plant pests, including a genetically engineered organism, or an infectious substance that can directly or indirectly injure or cause disease or damage in plants or parts of plants or in processed, manufactured, or other products of plants.

(5) "Plants and plant products" means trees, shrubs, vines, forage, and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from the plants and plant products.

(6) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or a form of inspection and certification document that accompanies the movement of inspected and certified plant material and plant products, or bees, bee hives, or beekeeping equipment.

(7) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, plant products, or bees, bee hives, or beekeeping equipment regulated under this chapter, in which the person agrees to comply with stipulated requirements.

(8) "Distribution" means the movement of a regulated article from the property where it is grown or kept, to property that is not contiguous to the property, regardless of the ownership of the properties.

(9) "Genetically engineered organism" means an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant DNA techniques, excluding those organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs. 301-392).

(10) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association, and every officer, agent, or employee of any of these entities.

(11) "Sell" means to sell, to hold for sale, offer for sale, handle, or to use as inducement for the sale of another article or product.

(12) "Noxious weed" means a living stage, including, but not limited to, seeds and reproductive parts, of a parasitic or other plant of a kind that presents a threat to Washington agriculture or environment.

(13) "Regulated article" means a plant or plant product, bees or beekeeping equipment, noxious weed or other articles or equipment capable of harboring or transporting plant or bee pests or noxious weeds that is specifically addressed in rules or quarantines adopted under this chapter.

(14) "Owner" means the person having legal ownership, possession, or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, or their agent.

(15) "Nuisance" means a plant, or plant part, apiary, or property found in a commercial area on which is found a pest, pathogen, or disease that is a source of infestation to other properties.

(16) "Bees" means honey producing insects of the species apis mellifera and includes the adults, eggs, larvae, pupae, and other immature stages of apis mellifera.

(17) "Bee pests" means a mite, other parasite, or disease that causes injury to bees.

(18) "Biological control" means the use by humans of living organisms to control or suppress undesirable animals and plants; the action of parasites, predators, or pathogens on a host or prey population to produce a lower general equilibrium than would prevail in the absence of these agents.

(19) "Biological control agent" means a parasite, predator, or pathogen intentionally released, by humans, into a target host or prey population with the intent of causing population reduction of that host or prey.

(20) "Emergency" means a situation where there is an imminent danger of an infestation of plant pests or disease that seriously threatens the state's agricultural or horticultural industries or environment and that cannot be adequately addressed with normal procedures or existing resources. [1991 c 257 § 4.]

17.24.011 Regulation of plant, plant product, and bee movement. Notwithstanding the provisions of RCW 17.24.041, the director may:

(1) Make rules under which plants, plant products, bees, hives and beekeeping equipment, and noxious weeds may be brought into this state from other states, territories, or foreign countries; and

(2) Make rules with reference to plants, plant products, bees, bee hives and equipment, and genetically engineered organisms while in transit through this state as may be deemed necessary to prevent the introduction into and dissemination within this state of plant and bee pests and noxious weeds. [1991 c 257 § 5.]

17.24.021 Inspection and investigation. (1) The director may intercept and hold or order held for inspection, or cause to be inspected while in transit or after arrival at their destination, all plants, plant products, bees, or other articles likely to carry plant pests, bee pests, or noxious weeds being moved into this state from another state, territory, or a foreign country or within or through this state for plant and bee pests and disease.

(2) The director may enter upon public and private premises at reasonable times for the purpose of carrying out this chapter. If the director be denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises. The court may upon such application issue the search warrant for the purposes requested.

(3) The director may adopt rules in accordance with chapter 34.05 RCW as may be necessary to carry out the purposes and provisions of this chapter. [1991 c 257 § 6.]

17.24.031 Determination of origin. The director may demand of a person who has in his or her possession or under his or her control, plants, bees, plant products, or other articles that may carry plant pests, bee pests, or noxious weeds, full information as to the origin and source of these items. Failure to provide that information, if known, may subject the person to a civil penalty. [1991 c 257 § 7.]

17.24.041 Power to adopt quarantine measures—Rules. If determined to be necessary to protect the forest, agricultural, horticultural, floricultural, beekeeping, or environmental interests of this state, the director may declare a quarantine against an area, place, nursery, orchard, vineyard, apiary, or other agricultural establishment, county or counties within the state, or against other states, territories, or foreign countries, or a portion of these areas, in reference to plant pests, or bee pests, or noxious weeds, or genetically engineered plant or plant pest organisms. The director may prohibit the movement of all regulated articles from such quarantined places or areas that are likely to contain such plant pests or noxious weeds or genetically engineered plant, plant pest, or bee pest organisms. The quarantine may be made absolute or rules may be adopted prescribing the conditions under which the regulated articles may be moved into, or sold, or otherwise disposed of in the state. [1991 c 257 § 8.]

17.24.051 Introduction of plant pests, noxious weeds, or organisms affecting plant life. The introduction into or release within the state of a plant pest, noxious weeds, bee pest, or any other organism that may directly or indirectly affect the plant life of the state as an injurious pest, parasite, predator, or other organism is prohibited, except under special permit issued by the department under rules adopted by the director. A special permit is not required for the introduction or release within the state of a genetically engineered plant or plant pest organism if the introduction or release has been approved under provisions of federal law and the department has been notified of the planned introduction or release. The department shall be the sole issuing agency for the permits. Except for research projects approved by the department, no permit for a biological control agent shall be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and not likely to become a pest of nontarget plants or other beneficial organisms. The director may also exclude biological control agents that are infested with parasites determined to be detrimental to the biological control efforts of the state. The department may rely upon findings of the United States department of agriculture or any experts that the director may deem appropriate in making a determination about the threat posed by such organisms. In addition, the director may request confidential business information subject to the conditions in RCW 17.24.061.

Plant pests, noxious weeds, or other organisms introduced into or released within this state in violation of this section shall be subject to detention and disposition as otherwise provided in this chapter. [1991 c 257 § 9.]

17.24.061 Protection of privileged or confidential information—Procedure—Notice—Declaratory judgment. (1) In submitting data required by this chapter, the applicant may: (a) Mark clearly portions of data which in his or her opinion are trade secrets or commercial or financial information; and (b) submit the marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make information submitted by an applicant or registrant under this chapter available to the public if, in the judgment of the director, the information is privileged or confidential because it contains or relates to trade secrets or commercial or financial information. Where necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director.

(3) If the director proposes to release for inspection or to reveal at a public hearing or in findings of fact issued by the director, information that the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he or she shall notify the applicant or registrant in writing, by certified mail. The director may not make this data available for inspection nor reveal the information at a public hearing or in findings of fact issued by the director until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may withdraw the application or may institute an action in the superior court of Thurston county for a declaratory judgment as to whether the information is subject to protection under subsection (2) of this section. [1991 c 257 § 10.]

17.24.071 Compliance agreements. The director may enter into compliance agreements with a person engaged in growing, handling, or moving articles, bees, plants, or plant products regulated under this chapter. [1991 c 257 § 11.]

17.24.081 Prohibited acts. It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infected or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed. [1991 c 257 § 12.]

17.24.091 Impound and disposition. (1) If upon inspection, the director finds that an inspected plant or plant product or bees are infected or infested or that a regulated article is being held or transported in violation of a rule or quarantine of the department, the director shall notify the owner that a violation of this chapter exists. The director may impound or order the impounding of the infected or infested or regulated article in such a manner as may be necessary to prevent the threat of infestation. The notice shall be in writing and sent by certified mail or personal service identifying the impounded article and giving notice that the articles will be treated, returned to the shipper or to a quarantined area, or destroyed in a manner as to prevent infestation. The impounded article shall not be destroyed unless the director determines that (a) no effective treatment can be carried out; and (b) the impounded article cannot be returned to the shipper or shipped back to a quarantine area without threat of infestation to this state; and (c) mere possession by the owner constitutes an emergency.

(2) Before taking action to treat, return, or destroy the impounded article, the director shall notify the owner of the owner's right to a hearing before the director under chapter 34.05 RCW. Within ten days after the notice has been given the owner may request a hearing. The request must be in writing.

(3) The cost to impound articles along with the cost, if any, to treat, return, or destroy the articles shall be at the owner's expense. The owner is not entitled to compensation for infested or infected articles destroyed by the department under this section. [1991 c 257 § 13.]

17.24.100 Penalties—Second and subsequent offenses. Every person who shall violate or fail to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of chapter 17.24 RCW, as now or hereafter amended, shall be guilty of a misdemeanor, and for a second and each subsequent violation or failure to comply with the provisions of this chapter or rule or regulation adopted hereunder, shall be guilty of a gross misdemeanor. [1981 c 296 § 26; 1927 c 292 § 7; RRS § 2786. Prior: 1921 c 105 § 7.]

Severability—1981 c 296: See note following RCW 15.04.020.

17.24.101 State-wide survey and control activity. If there is reason to believe that a plant or bee pest may adversely impact the forestry, agricultural, horticultural, floricultural, or related industries of the state; or may cause harm to the environment of the state; or such information is needed to facilitate or allow the movement of forestry, agricultural, horticultural, or related products to out-of-state, foreign and domestic markets, the director may conduct, or cause to be conducted, surveys to determine the presence, absence, or distribution of a pest.

The director may take such measures as may be required to control or eradicate such pests where such measures are determined to be in the public interest, are technically feasible, and for which funds are appropriated or provided through cooperative agreements. [1991 c 257 § 14.]

17.24.111 Director's cooperation with other agencies. The director may enter into cooperative arrangements with a person, municipality, county, Washington State University or any of its experiment stations, or other agencies of this state, and with boards, officers, and authorities of other states and the United States, including the United States department of agriculture, for the inspection of bees, plants and plant parts and products and the control or eradication of plant pests, bee pests, or noxious weeds and to carry out other provisions of this chapter. [1991 c 257 § 15.]

17.24.121 Acquisition of lands, water supply, or other properties for quarantine locations. The director may acquire, in fee or in trust, by gift, or whenever funds are appropriated for such purposes, by purchase, easement, lease, or condemnation, lands or other property, water supplies, as may be deemed necessary for use by the department for establishing quarantine stations for the purpose of the isolation, prevention, eradication, elimination, and control of insect pests or plant pathogens that affect the agricultural or horticultural products of the state; for the propagation of biological control agents; or the isolation of

genetically engineered plants or plant pests; or the isolation of bee pests. [1991 c 257 § 16.]

17.24.131 Requested inspections—Fee for service. To facilitate the movement or sale of forest, agricultural, floricultural, horticultural and related products, or bees and related products, the director may provide, if requested by farmers, growers, or other interested persons, special inspections, pest identifications, plant identifications, plant diagnostic services, other special certifications and activities not otherwise authorized by statute and to prescribe a fee for that service. The fee shall, as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved. Moneys collected shall be deposited in the plant pest account, which is hereby created within the agricultural local fund. No appropriation is required for disbursement from the plant pest account to provide the services authorized by this section. [1991 c 257 § 17.]

17.24.141 Penalties—Criminal and civil penalty. Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to RCW 17.24.100, the director may impose upon and collect from the violator a civil penalty not exceeding five thousand dollars per violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of commission or omission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty. [1991 c 257 § 18.]

17.24.151 Violations—Costs of control. A person who, through a knowing and willful violation of a quarantine established under this chapter, causes an infestation to become established, may be required to pay the costs of public control or eradication measures caused as a result of that violation. [1991 c 257 § 19.]

17.24.161 Funds for technical and scientific services. The director may, at the director's discretion, provide funds for technical or scientific services, labor, materials and supplies, and biological control agents for the control of plant pests, bee pests, and noxious weeds. [1991 c 257 § 20.]

17.24.171 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedures. (1) If the director determines that there exists an imminent danger of an infestation of plant pests or plant diseases that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, or economic well-being, the director shall request the governor to order emergency measures to control the pests or plant diseases under RCW 43.06.010(14). The director's findings shall contain an evaluation of the affect of the emergency measures on public health.

(2) If an emergency is declared pursuant to RCW 43.06.010(14), the director may appoint a committee to advise the governor through the director and to review emergency measures necessary under the authority of RCW 43.06.010(14) and this section and make subsequent recommendations to the governor. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to implement the emergency measures to prevent, control, or eradicate plant pests or plant diseases that are the subject of the emergency order. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals or companies, or both, to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he or she finds that the emergency no longer exists or if certain emergency measures should be discontinued. [1991 c 257 § 21.]

17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions. The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to wilful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law.

Each person, firm, corporation, or other entity authorized to provide the prevention, control, or eradication measures implementing a program approved under *RCW

17.24.200 shall be identified on a list approved by the director. For the purposes of this section, each person on the list shall be known, for the duration of the person's services under the program, as "an emergency measures worker." [1982 c 153 § 3.]

***Reviser's note:** RCW 17.24.200 was repealed by 1991 c 257 § 23.

Severability—1982 c 153: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 153 § 5.]

Effective date—1982 c 153: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 c 153 § 7.]

17.24.900 Captions not law—1991 c 257. Captions as used in RCW 17.24.005 through 17.24.171 constitute no part of the law. [1991 c 257 § 24.]

Chapter 17.28
MOSQUITO CONTROL DISTRICTS

Sections

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

17.28.010 Definitions. When used in this chapter, the following terms, words or phrases shall have the following meaning:

(1) "District" means any mosquito control district formed pursuant to this chapter.

(2) "Board" or "district board" means the board of trustees governing the district.

(3) "County commissioners" means the governing body of the county.

(4) "Unit" means all unincorporated territory in a proposed district in one county, regarded as an entity, or each city in a proposed district, likewise regarded as an entity.

(5) "Territory" means any city or county or portion of either or both city or county having a population of not less than one hundred persons.

(6) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. [1957 c 153 § 1.]

17.28.020 Districts may be organized in counties—Petition, presentment, signatures. Any number of units of a territory within the state of Washington in Adams, Benton, Franklin, Grant, Kittitas, Walla Walla and Yakima counties or any other county may be organized as a mosquito control district under the provisions of this chapter.

A petition to form a district may consist of any number of separate instruments which shall be presented at a regular meeting of the county commissioners of the county in which the greater area of the proposed district is located. Petitions shall be signed by registered voters of each unit of the proposed district, equal in number to not less than ten percent of the votes cast in each unit respectively for the office of governor at the last gubernatorial election prior to the time of presenting the petition. [1969 c 96 § 1; 1957 c 153 § 2.]

17.28.030 Petition method—Description of boundaries—Verification of signatures—Resolution to include city. Before a city can be included as a part of the proposed district its governing body shall have requested that the city be included by resolution, duly authenticated.

The petition shall set forth and describe the boundaries of the proposed district and it shall request that it be organized as a mosquito control district. Upon receipt of such a petition, the auditor of the county in which the greater area of the proposed district is located shall be charged with the responsibility of examining the same and certifying to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petitions, the auditor shall be permitted access to the voters' registration books of each city and county located in the proposed district and may appoint the respective county auditors and city clerks thereof as his deputies. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the county in which the greater area of the proposed district is located, together with his certificate as to the sufficiency thereof. [1957 c 153 § 3.]

17.28.040 Petition method—Publication of petition and notice of meeting. Upon receipt of a duly certified petition, the board of commissioners shall cause the text of the petition to be published once a week for at least three consecutive weeks in one or more newspapers of general circulation within the county where the petition is presented and at each city a portion of which is included in the proposed district. If any portion of the proposed district lies in another county, the petition and notice shall be likewise published in that county.

Only one copy of the petition need be published even though the district embraces more than one unit. No more than five of the names attached to the petition need appear in the publication of the petition and notice, but the number of signers shall be stated.

With the publication of the petition there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered, stating that all persons interested may appear and be heard. [1957 c 153 § 4.]

17.28.050 Resolution method. Such districts may also be organized upon the adoption by the county commissioners of a resolution of intention so to do, in lieu of the procedure hereinbefore provided for the presentation of petitions. In the event the county commissioners adopt a resolution of intention, such resolution shall describe the boundaries of the proposed district and shall set a time and place at which they will consider the organization of the district, and shall state that all persons interested may appear and be heard. Such resolution of intention shall be published in the same manner and for the same length of time as a petition. [1957 c 153 § 5.]

17.28.060 Hearing—Defective petition—Establishment of boundaries. At the time stated in the notice of the filing of the petition or the time mentioned in the resolution of intention, the county commissioners shall consider the organization of the district and hear those appearing and all protests and objections to it. The commissioners may adjourn the hearing from time to time, not exceeding two months in all.

No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures thereto, shall vitiate any proceedings if the petition has a sufficient number of qualified signatures.

On the final hearing the county commissioners shall make such changes in the proposed boundaries as are advisable, and shall define and establish the boundaries. [1957 c 153 § 6.]

17.28.070 Procedure to include other territory. If the county commissioners deem it proper to include any territory not proposed for inclusion within the proposed boundaries, they shall first cause notice of intention to do so to be mailed to each owner of land in the territory whose name appears as owner on the last completed assessment roll of the county in which the territory lies, addressed to the owner at his address given on the assessment roll, or if no address is given, to his last known address; or if it is not known, at the county seat of the county in which his land lies. The notice shall describe the territory and shall fix a time, not less than two weeks from the date of mailing, when all persons interested may appear before the county commissioners and be heard.

The boundaries of a district lying in a city shall not be altered unless the governing board of the city, by resolution, consents to the alteration. [1957 c 153 § 7.]

17.28.080 Determination of public necessity and compliance with chapter. Upon the hearing of the petition the county commissioners shall determine whether the public necessity or welfare of the proposed territory and of its inhabitants requires the formation of the district, and shall also determine whether the petition complies with the provisions of this chapter, and for that purpose shall hear all competent and relevant testimony offered. [1957 c 153 § 8.]

17.28.090 Declaration establishing and naming district—Election to form district—Establishment of district. If, from the testimony given before the county commissioners, it appears to that board that the public necessity or welfare requires the formation of the district, it shall, by an order entered on its minutes, declare that to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined be organized as a district, under an appropriate name to be selected by the county commissioners, subject to approval of the voters of the district as hereinafter provided. The name shall contain the words "mosquito control district."

At the time of the declaration establishing and naming the district, the county commissioners shall by resolution call a special election to be held not less than thirty days and not more than sixty days from the date thereof, and shall cause to be published a notice of such election at least once a week for three consecutive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed district as finally adopted, and the object of the election. If any portion of the proposed district lies in another county, a notice of such election shall likewise be published in that county.

The election on the formation of the mosquito control district shall be conducted by the auditor of the county in which the greater area of the proposed district is located in accordance with the general election laws of the state and the results thereof shall be canvassed by that county's canvassing board. For the purpose of conducting an election under this section, the auditor of the county in which the greater area of the proposed district is located may appoint the auditor of any county or the city clerk of any city lying wholly or partially within the proposed district as his deputies. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election and has resided within the mosquito control district for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall a mosquito control district be established for the area described in a resolution of the board of commissioners of . . . . . county adopted on the . . . . day of . . . . . ., 19. . .?

YES . . . . . ☐
NO . . . . . ☐"

If a majority of the persons voting on the proposition shall vote in favor thereof, the mosquito control district shall thereupon be established and the county commissioners of the county in which the greater area of the district is situated shall immediately file for record in the office of the county auditor of each county in which any portion of the land embraced in the district is situated, and shall also forward to the county commissioners of each of the other counties, if any, in which any portion of the district is situated, and also shall file with the secretary of state, a certified copy of the order of the county commissioners. From and after the date of the filing of the certified copy with the secretary of state, the district named therein is organized as a district, with all the rights, privileges, and powers set forth in this chapter, or necessarily incident thereto.

If a majority of the persons voting on the proposition shall vote in favor thereof, all expenses of the election shall be paid by the mosquito control district when organized. If the proposition fails to receive a majority of votes in favor, the expenses of the election shall be borne by the respective counties in which the district is located in proportion to the number of votes cast in said counties. [1957 c 153 § 9.]

17.28.100 Election on proposition to levy tax. At the same election there shall be submitted to the voters residing within the district, for their approval or rejection, a proposition authorizing the mosquito control district, if formed, to levy at the earliest time permitted by law on all taxable property located within the mosquito control district a general tax, for one year, of up to twenty-five cents per thousand dollars of assessed value in excess of any constitutional or statutory limitation for authorized purposes of the mosquito control district. The proposition shall be expressed on the ballots in substantially the following form:

"ONE YEAR . . . . . CENTS PER THOUSAND DOLLARS OF ASSESSED VALUE LEVY

"Shall the mosquito control district, if formed, levy a general tax of . . . . . cents per thousand dollars of assessed value for one year upon all the taxable property within said district in excess of the constitutional and/or statutory tax limits for authorized purposes of the district?

YES . . . . . ☐
NO . . . . . ☐"

Such proposition to be effective must be approved by a majority of at least three-fifths of the persons voting on the proposition to levy such tax in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1982 c 217 § 1; 1973 1st ex.s. c 195 § 2; 1957 c 153 § 10.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

17.28.110 Board of trustees—Composition. Within thirty days after the filing with the secretary of state of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed. The district board shall be appointed as follows:

(1) If the district is situated in one county only and consists wholly of unincorporated territory, five members shall be appointed by the county commissioners of the county.

(2) If the district is situated entirely in one county and includes both incorporated and unincorporated territory one member shall be appointed from each commissioner district lying wholly or partly within the district by the county commissioners of the county, and one member from each city, the whole or part of which is situated in the district, by the governing body of the city; but if the district board created consists of less than five members, the county commissioners shall appoint from the district at large enough additional members to make a board of five members.

(3) If the district is situated in two or more counties and is comprised wholly of incorporated territory, one member shall be appointed from each commissioner district of each county or portion of a county situated in the district by the county commissioners; but if the district board created consists of less than five members, the county commissioners of the county in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members.

(4) If the district is situated in two or more counties and consists of both incorporated and unincorporated territory, one member shall be appointed by the county commissioners of each of the counties from that portion of the district lying within each commissioner district within its jurisdiction; and one member from each city, a portion of which is situated in the district by the governing body of the city; but if the board created consists of less than five members, the county commissioners in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members. [1959 c 64 § 1; 1957 c 153 § 11.]

17.28.120 Board of trustees—Name of board—Qualification of members. The district board shall be called "The board of trustees of . . . . . mosquito control district."

Each member of the board appointed by the governing body of a city shall be an elector of the city from which he is appointed and a resident of that portion of the city which is in the district.

Each member appointed from a county or portion of a county shall be an elector of the county and a resident of that portion of the county which is in the district.

Each member appointed at large shall be an elector of the district. [1957 c 153 § 12.]

17.28.130 Board of trustees—Terms—Vacancies. The members of the first board in any district shall classify themselves by lot at their first meeting so that:

(1) If the total membership is an even number, the terms of one-half the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

(2) If the total membership is an odd number, the terms of a bare majority of the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

The term of each subsequent member is two years from and after the expiration of the term of his predecessor.

In event of the resignation, death, or disability of any member, his successor shall be appointed by the governing body which appointed him. [1957 c 153 § 13.]

17.28.140 Board of trustees—Organization—Officers—Compensation—Expenses. The members of the first district board shall meet on the first Monday subsequent to thirty days after the filing with the secretary of state of the certificate of incorporation of the district. They shall organize by the election of one of their members as president and one as secretary.

The members of the district board shall serve without compensation; but the necessary expenses of each member for actual traveling in connection with meetings or business of the board may be allowed and paid.

The secretary shall receive such compensation as shall be fixed by the district board. [1957 c 153 § 14.]

17.28.150 Board of trustees—Meetings—Rules—Quorum. The district board shall provide for the time and place of holding its regular meetings, and the manner of calling them, and shall establish rules for its proceedings.

Special meetings may be called by three members, notice of which shall be given to each member at least twenty-four hours before the meeting.

All of its sessions, whether regular or special, shall be open to the public.

A majority of the members shall constitute a quorum for the transaction of business. [1957 c 153 § 15.]

17.28.160 Powers of district. A mosquito control district organized under this chapter may:

(1) Take all necessary or proper steps for the extermination of mosquitoes.

(2) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes.

(3) If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, rights of way, easements, property, or material necessary for any of those purposes.

(4) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

(5) Enter upon without hindrance any lands within the district for the purpose of inspection to ascertain whether breeding places of mosquitoes exist upon such lands; or to abate public nuisances in accordance with this chapter; or to ascertain if notices to abate the breeding of mosquitoes upon such lands have been complied with; or to treat with oil or other larvicidal material any breeding places of mosquitoes upon such lands.

(6) Sell or lease any land, rights of way, easements, property or material acquired by the district.

(7) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board payable annually or semiannually as the board may prescribe.

(8) Make contracts with the United States, or any state, municipality, or any department of those entities for carrying out the general purpose for which the district is formed.

(9) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes.

(10) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants; and publish information or literature and do any and all other things necessary or incident to the powers granted by, and to carry out the projects specified in this chapter. [1981 c 156 § 1; 1957 c 153 § 16.]

17.28.170 Mosquito breeding places declared public nuisance—Abatement. Any breeding place for mosquitoes which exists by reason of any use made of the land on which it is found or of any artificial change in its natural condition is a public nuisance: PROVIDED, That conditions or usage of land which are beyond the control of the landowner or are not contrary to normal, accepted practices of water usage in the district, shall not be considered a public nuisance.

The nuisance may be abated in any action or proceeding, or by any remedy provided by law. [1959 c 64 § 2; 1957 c 153 § 17.]

17.28.175 Control of mosquitos—Declaration that owner is responsible. A board established pursuant to RCW 17.28.110 may adopt, by resolution, a policy declaring

that the control of mosquitos within the district is the responsibility of the owner of the land from which the mosquitos originate. To protect the public health or welfare, the board may, in accordance with policies and standards established by the board following a public hearing, adopt a regulation requiring owners of land within the district to perform such acts as may be necessary to control mosquitos. [1990 c 300 § 2.]

17.28.185 Control of mosquitos—Noncompliance by landowner with regulations. (1) Whenever the board finds that the owner has not taken prompt and sufficient action to comply with regulations adopted pursuant to RCW 17.28.175 to control mosquitos originating from the owner's land, the board shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, or served by personal service. The notice shall provide a reasonable time period for action to be taken to control mosquitos. If the board deems that a public nuisance or threat to public health or welfare caused by the mosquito infestation is sufficiently severe, it may require immediate control action to be taken within forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by certified mail or personal service.

(2) If the owner does not take sufficient action to control mosquitos in accordance with the notice, the board may control them, or cause their being controlled, at the expense of the owner. The amount of such expense shall constitute a lien against the property and may be enforced by proceedings on such lien. The owner shall be liable for payment of the expenses, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien. Necessary costs and expenses, including reasonable attorneys' fees, incurred by the board in carrying out this section, may be recovered at the same time, as a part of the action filed under this section. The venue in proceedings for reimbursement of expenses brought pursuant to this section, including those involving governmental entities, shall be the county in which the real property that is the subject of the action is situated. [1990 c 300 § 3.]

17.28.250 Interference with entry or work of district—Penalty. Any person who obstructs, hinders, or interferes with the entry upon any land within the district of any officer or employee of the district in the performance of his duty, and any person who obstructs, interferes with, molests, or damages any work performed by the district, is guilty of a misdemeanor. [1957 c 153 § 25.]

17.28.251 Borrowing money or issuing warrants in anticipation of revenue. A mosquito control district may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of revenue, and such warrants shall be redeemed from the first money available from such taxes. [1959 c 64 § 3.]

17.28.252 Excess levy authorized. A mosquito control district shall have the power to levy additional taxes in excess of the constitutional and/or statutory limitations for any of the authorized purposes of such district, not in excess of fifty cents per thousand dollars of assessed value per year when authorized so to do by the electors of such district by a three-fifths majority of those voting on the proposition in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended at such time as may be fixed by the board of trustees for the district, which special election may be called by the board of trustees of the district, at which special election the proposition of authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "Yes" and those opposing thereto to vote "No". Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. [1973 1st ex.s. c 195 § 3; 1959 c 64 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

17.28.253 District boundaries for tax purposes. For the purpose of property taxation and the levying of property taxes the boundaries of the mosquito control district shall be the established official boundary of such district existing on the first day of September of the year in which the levy is made, and no such levy shall be made for any mosquito control district whose boundaries are not duly established on the first day of September of such year. [1959 c 64 § 5.]

17.28.254 Abatement, extermination declared necessity and benefit to land. It is hereby declared that whenever the public necessity or welfare has required the formation of a mosquito control district, the abatement or extermination of mosquitoes within the district is of direct, economic benefit to the land located within such district and is necessary for the protection of the public health, safety and welfare of those residing therein. [1959 c 64 § 6.]

17.28.255 Classification of property—Assessments. The board of trustees shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall apportion and assess the several lots, blocks, tracts, and parcels of land or other property within the district, which assessment shall be collected with the general taxes of the county or counties. [1959 c 64 § 7.]

17.28.256 Assessments—Roll, hearings, notices, objections, appeal, etc. The board of trustees in assessing the property within the district and the rights, duties and liabilities of property owners therein shall be governed, insofar as is consistent with this chapter, by the provisions for county road improvement districts as set forth in RCW 36.88.090 through 36.88.110. [1959 c 64 § 8.]

17.28.257 Assessments—Payment, lien, delinquencies, foreclosure, etc. The provisions of RCW 36.88.120, 36.88.140, 36.88.150, 36.88.170 and 36.88.180 governing the liens, collection, payment of assessments, delinquent assess-

ments, interest and penalties, lien foreclosure and foreclosed property of county road improvement districts shall govern such matters as applied to mosquito control districts. [1959 c 64 § 9.]

17.28.258 County treasurer—Duties. The county treasurer shall collect all mosquito control district assessments, and the duties and responsibilities herein imposed upon him shall be among the duties and responsibilities of his office for which his bond is given as county treasurer. The collection and disposition of revenue from such assessments and the depositary thereof shall be the same as for tax revenues of such districts as provided in RCW 17.28.270. [1959 c 64 § 10.]

17.28.260 General obligation bonds—Excess property tax levies. A mosquito control district shall have the power to issue general obligation bonds and to pledge the full faith and credit of the district to the payment thereof, for authorized capital purposes of the mosquito control district, and to provide for the retirement thereof by excess property tax levies whenever a proposition authorizing both the issuance of such bonds and the imposition of such excess levies has been approved by the voters of the district, at an election held pursuant to RCW 39.36.050, by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than forty percent of the total number of votes cast within the area of said mosquito control district at the last preceding county or state general election. Mosquito control districts may become indebted for capital purposes up to an amount equal to one and one-fourth percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015.

Such bonds shall never be issued to run for a longer period than ten years from the date of issue and shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 5; 1983 c 167 § 18; 1973 1st ex.s. c 195 § 4; 1970 ex.s. c 56 § 5; 1969 ex.s. c 232 § 65; 1957 c 153 § 26.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

17.28.270 Collection, disposition, of revenue—Depository. All taxes levied under this chapter shall be computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes. When collected, the taxes shall be paid into the county treasury for the use of the district.

If the district is in more than one county the treasury of the county in which the district is organized is the depository of all funds of the district.

The treasurers of the other counties shall, at any time, not oftener than twice each year, upon the order of the district board settle with the district board and pay over to the treasurer of the county where the district is organized all money in their possession belonging to the district. The last named treasurer shall give a receipt for the money and place it to the credit of the district. [1957 c 153 § 27.]

17.28.280 Withdrawal of funds. The funds shall only be withdrawn from the county treasury depository upon the warrant of the district board signed by its president or acting president, and countersigned by its secretary. [1957 c 153 § 28.]

17.28.290 Matching funds. Any part or all of the taxes collected for use of the district may be used for matching funds made available to the district by county, state, or federal governmental agencies. [1957 c 153 § 29.]

17.28.300 Expenses of special elections. All expenses of any special election conducted pursuant to the provisions of this chapter shall be paid by the mosquito control district. [1957 c 153 § 30.]

17.28.310 Annual certification of assessed valuation. It shall be the duty of the assessor of each county lying wholly or partially within the district to certify annually to the board the aggregate assessed valuation of all taxable property in his county situated in any mosquito control district as the same appears from the last assessment roll of his county. [1957 c 153 § 31.]

17.28.320 Annexation of territory authorized—Consent by city. Any territory contiguous to a district may be annexed to the district.

If the territory to be annexed is in a city, consent to the annexation shall first be obtained from the governing body of the city. An authenticated copy of the resolution or order of that body consenting to the annexation shall be attached to the annexation petition. [1957 c 153 § 32.]

17.28.330 Annexation of territory authorized—Petition—Hearing—Boundaries. The district board, upon receiving a written petition for annexation containing a description of the territory sought to be annexed, signed by registered voters in said territory equal in number to at least ten percent of the number of votes cast in the territory for the office of governor at the last gubernatorial election prior to the time the petition is presented, shall set the petition for hearing. It shall publish notice of the hearing along with a copy of the petition, stating the time and place set for the hearing, in each county in which any part of the district or of the territory is situated, and in each city situated wholly or in part in the territory. Not more than five of the names attached to the petition need appear in the publication, but the number of signers shall be stated.

At the time set for the hearing the district board shall hear persons appearing in behalf of the petition and all protests and objections to it. The district board may adjourn the hearing from time to time, but not exceeding two months in all.

On the final hearing the district board shall make such changes as it believes advisable in the boundaries of the territory, and shall define and establish the boundaries. It shall also determine whether the petition meets the requirements of this chapter. [1957 c 153 § 33.]

17.28.340 Annexation of territory authorized—Order of annexation—Election. If upon the hearing the district board finds that the petition and the proceedings thereon meet the requirements of this chapter and that it is desirable and to the interests of the district and of the territory proposed to be annexed that the territory, with boundaries as fixed and determined by the district board, or any portion of it, should be annexed to the district, the board shall order the boundaries of the district changed to include the territory, or portion of the territory, subject to approval of the electors of the territory proposed to be annexed. The election to be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district. The expenses of such election shall be borne by the mosquito control district regardless of the outcome of the election.

The order of annexation shall describe the boundaries of the annexed territory and that portion of the boundary of the district which coincides with any boundary of the territory. If necessary in making this order, the board may have any portion of the boundaries surveyed.

If more than one petition for the annexation of the territory has been presented, the district board may in one order include in the district any number of separate territories. [1957 c 153 § 34.]

17.28.350 Annexation of territory authorized—Filing of order—Composition of board. The order of annexation shall be entered in the minutes of the board and certified copies shall be filed with the secretary of state and with the county clerk and county auditor of each county in which the district or any part of it is situated.

From and after the date of the filing and recording of the certified copies of the order, the territory described in the order is a part of the district, with all the rights, privileges, and powers set forth in this act and those necessarily incident thereto.

After the annexation of territory to a district, the district board shall consist of the number of members and shall be appointed in the manner prescribed by this chapter for a district formed originally with boundaries embracing the annexed territory. However, the members of the district board in office at the time of the annexation shall continue to serve as members during the remainder of the terms for which they were appointed. [1957 c 153 § 35.]

17.28.360 Consolidation of districts—Initial proceedings. Whenever in the judgment of the district board it is for the best interests of the district that it be consolidated with one or more other districts, it may, by a two-thirds vote of its members, adopt a resolution reciting that fact and declaring the advisability of such consolidation and the willingness of the board to consolidate. The resolution shall be sent to the board of each district with which consolidation is proposed.

The board of each district to which a proposal of consolidation is sent shall consider said proposal and give notice of its decision to the proposing board. [1957 c 153 § 36.]

17.28.370 Consolidation of districts—Concurrent resolution. Should it appear that two-thirds of the members of each of the boards of districts proposed to be consolidated favor consolidation each of said boards shall then, by a vote of not less than two-thirds of its members adopt a concurrent resolution in favor of consolidation, declaring its willingness to consolidate, specifying a name for the consolidated district. Immediately upon the adoption of said concurrent resolution a copy of same signed by not less than two-thirds of the members of each board shall be forwarded to the county commissioners of the county in which all of or a major portion of the land of all, the districts consolidated are situated. [1957 c 153 § 37.]

17.28.380 Consolidation of districts—Election. When the concurrent resolution for consolidation has been adopted, each board of the districts proposed for consolidation shall forthwith call a special election in its district in which shall be presented to the electors of the districts the question whether the consolidation shall be effected.

The election shall be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district.

The board of each district shall declare the returns of the election in its district, and shall certify the results to the county commissioners of the county in which all the districts, or the major portion of the land of all the districts, are situated. [1957 c 153 § 38.]

17.28.390 Consolidation of districts—Order of consolidation. Should not less than two-thirds of the votes of each of the respective districts proposed to be consolidated favor consolidation the county commissioners shall immediately:

(1) Enter an order on its minutes consolidating all of the districts proposed for consolidation into one district with name as specified in the concurrent resolution.

(2) Transmit a certified copy of the order to the county commissioners of any other county in which any portion of the consolidated district is situated.

(3) Record a copy in the office of the county auditor of each of the counties in which any portion of the consolidated district is situated.

(4) File a copy in the office of the secretary of state.

After the transmission, recording and filing of the order, the territory in the districts entering into the consolidation proposal forms a single consolidated district. [1957 c 153 § 39.]

17.28.400 Consolidation of districts—Composition of board. After the consolidation, the board of the consolidated district shall consist of the number and shall be appointed in the manner prescribed by this chapter for a district originally formed.

The terms of the members of the district boards of the several districts consolidated who are in office at the time of consolidation shall terminate at the time the consolidation becomes effective. [1957 c 153 § 40.]

17.28.410 Consolidation of districts—Powers of consolidated district—Indebtedness of former districts. The consolidated district has all the rights, powers, duties, privileges and obligations of a district formed originally under the provisions of this chapter.

If at the time of consolidation there is outstanding an indebtedness of any of the former districts included in the consolidated district, that indebtedness shall be paid in the manner provided for the payment of indebtedness upon dissolution of a district.

A consolidated district shall not be liable for any indebtedness of any of the former districts included in it which was outstanding at the time of consolidation.

No property in any of the former districts shall be taxed to pay any indebtedness of any other former district existing at the date of the consolidation. [1957 c 153 § 41.]

17.28.420 Dissolution—Election. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors in the district at a special election called by the district board upon the question. The question shall be submitted as, "Shall the district be dissolved?", or words to that effect.

Notice of the election shall be published at least once a week for at least four weeks prior to the date of the election in a newspaper of general circulation in each county of the district. [1957 c 153 § 42.]

17.28.430 Dissolution—Result of election to be certified—Certificate of dissolution. Should two-thirds or more of the votes at the election favor dissolution the district board shall certify that fact to the secretary of state. Upon receipt of such certification the secretary of state shall issue his certificate reciting that the district (naming it) has been dissolved, and shall transmit to and file a copy with the county clerk of each county in which any portion of the district is situated.

After the date of the certificate of the secretary of state, the district is dissolved. [1957 c 153 § 43.]

17.28.440 Dissolution—Disposition of property. If the district at the time of dissolution was wholly within unincorporated territory in one county, its property vests in that county.

If the district at the time of dissolution was situated wholly within the boundaries of a single city, its property vests in that city.

If the district at the time of dissolution comprised only unincorporated territory in two or more counties, its property vests in those counties in proportion to the assessed value of each county's property within the boundaries of the district as shown on the last equalized county assessment roll.

If the district at the time of dissolution comprised both incorporated and unincorporated territory, its property vests in each unit in proportion as its assessed property value lies within the boundaries of the district: PROVIDED, HOWEVER, That any real property, easements, or rights of way vest in the city in which they are situated or in the county in which they are situated. [1957 c 153 § 44.]

17.28.450 Dissolution—Collection of taxes to discharge indebtedness. If, at the time of election to dissolve, a district has outstanding any indebtedness, the vote to dissolve the district dissolves it for all purposes except the levy and collection of taxes for the payment of the indebtedness, and expenses of assessing, levying, and collecting such taxes.

Until the indebtedness is paid, the county commissioners of the county in which the greater portion of the district was situated shall act as the ex officio district board and shall levy taxes and perform such functions as may be necessary in order to pay the indebtedness. [1957 c 153 § 45.]

17.28.900 Severability—1957 c 153. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included therein, if any such remaining part can then be administered in furtherance of the purposes of this chapter. [1957 c 153 § 46.]

Chapter 17.34
PEST CONTROL COMPACT

Sections

17.34.010 Compact provisions. The pest control compact is hereby enacted into law and entered into with all other jurisdiction legally joining therein in the form substantially as follows:

ARTICLE I

FINDINGS

The party states find that:

1. In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

2. Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

3. The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

4. While every state is seriously affected by a substantial number of pests, and every state is susceptible of

infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

1. "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

2. "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

3. "Responding state" means a state request to undertake or intensify the measures referred to in subdivision (2) of this Article.

4. "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

5. "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.

6. "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

7. "Executive Committee" means the committee established pursuant to Article V(E) of this compact.

ARTICLE III

THE INSURANCE FUND

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

ARTICLE IV

THE INSURANCE FUND,
INTERNAL OPERATIONS AND MANAGEMENT

A. The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

B. The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

C. The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

D. The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provisions for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

F. The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

G. The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (F) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

H. The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy

thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

I. The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

J. In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

ARTICLE V

COMPACT AND INSURANCE FUND ADMINISTRATION

A. In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and

2. Represent his state on the Governing Board of the Insurance Fund.

B. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.

C. The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

D. At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

E. The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

ARTICLE VI

ASSISTANCE AND REIMBURSEMENT

A. Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

B. Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

C. In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the Governing Board may require consistent with the provisions of this compact.

D. The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

E. Upon the submission as required by paragraph (C) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

F. A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

G. Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

H. Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the Federal Government and shall request the appropriate agency or agencies of the Federal Government for such assistance and participation.

I. The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

ARTICLE VII

ADVISORY AND TECHNICAL COMMITTEES

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

ARTICLE VIII

RELATIONS WITH NONPARTY JURISDICTIONS

A. A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

B. At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to

review of any determination made by the Executive Committee.

C. The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

ARTICLE IX

FINANCE

A. The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

B. Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

C. The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account". The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

D. The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(G) of this compact, provided that the Governing Board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV(G) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

E. The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.

F. The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

ARTICLE X

ENTRY INTO FORCE AND WITHDRAWAL

A. This compact shall enter into force when enacted into law by any five or more states: provided, that one such state is contiguous to this state and the legislature has appropriated the necessary funds. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any

state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1969 ex.s. c 130 § 1.]

17.34.020 Cooperation with insurance fund authorized. Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the Pest Control Compact. [1969 ex.s. c 130 § 2.]

17.34.030 Filing of bylaws and amendments. Pursuant to Article IV(H) of the compact, copies of bylaws and amendments thereto shall be filed with the code reviser's office. [1969 ex.s. c 130 § 3.]

17.34.040 Compact administrator. The compact administrator for this state shall be the director of agriculture. The duties of the compact administrator shall be deemed a regular part of his office. [1969 ex.s. c 130 § 4.]

17.34.050 Requests or applications for assistance from insurance fund. Within the meaning of Article VI(B) or VIII(A), a request or application for assistance from the insurance fund may be made by the director of agriculture whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request. [1969 ex.s. c 130 § 5.]

17.34.060 Agency incurring expenses to be credited with payments to this state. The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his account in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof. [1969 ex.s. c 130 § 6.]

17.34.070 "Executive head" defined. As used in the compact, with reference to this state, the term "executive head" shall mean the director of agriculture. [1969 ex.s. c 130 § 7.]